(2)

No. 92- 92-1934

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

J.M. INDIVIDUALLY

Petitioner,

- against -

V.C., [redacted]

Respondent.

VOLUME I OF PETITIONER'S APPENDIX
IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

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JOHN DOE, a fictitious name of a real person, individually; JOHN DOE, a fictitious name of a real person, guardian ad litem for his unborn infant child,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92
Plaintiff,	Civil Action
vs.	VERIFIED COMPLAINT
JANE ROE, a fictitious name of a real person; XYZ ABORTION CLINIC, INC. a fictitious name of real corporation doing business in the State of New Jersey; JOSEPH BLOW AND RICHARD ROE fictitious names of real individuals who are employees and agents of the defendant Corporation,	
Defendants.	

John Doe, a fictitious name of a real person, by way of Complaint against the defendants, says:

FIRST COUNT

1. John Doe, a fictitious name of a real person whose identity is disclosed in an affidavit filed with the court under seal, is a 38 year old man who resides in Monmouth County, New Jersey. Jane Roe, a fictitious name of a real person whose identity is disclosed in an affidavit filed with the court under seal, is a 32 year old woman who resides in Monmouth County, New Jersey. XYZ Abortion Clinic, Inc., a fictitious name of a real corporation doing business in the State of New Jersey, is a corporation which maintains facilities for medical procedures which include abortions, and is located in Monmouth County, New Jersey. The defendants Joseph Blow and Richard Roe, fictitious names of real persons, are employees and agents of XYZ Abortion Clinic, Inc., both of whom assist, direct and perform abortions at the location for XYZ Abortion Clinic, Inc.

2. In July of the year 1991, the plaintiff John Doe met the plaintiff Jane Roe and shortly thereafter started dating. In September of 1991, the plaintiff first proposed marriage to the defendant, Jane Roe, who advised the plaintiff that she would consider marriage but it was premature at that time. Thereafter, Mr. Doe and Ms. Roe continued to date and their relationship

grew. The plaintiff maintains that he loves the plaintiff Jane Roe and she has expressed similar feelings and emotions for him. In January of 1992 the defendant Jane Roe became pregnant with a child father by the plaintiff, John Doe. In February of 1992 Ms. Roe suspected pregnancy and personally performed a test which proved positive for pregnancy. She so advised the plaintiff and a repeat test was done while he was present. That test was also positive.

3. Upon initially hearing of Ms. Roe's pregnancy, the plaintiff was exhilarated and happy. He expressed optimism about the joy that they would derive from the two of them forming a new family. The plaintiff immediately proposed marriage and expressed his desire to assist in the rearing of the child. The defendant, Jane Roe, advised the plaintiff that she believed that she wasn't prepared to rear the child at this time and was considering an abortion to terminate the life of the child.

4. The plaintiff John Doe has continually advised the defendant, Jane Roe that he is prepared to marry her and live up to his obligations as father to the child. He has also advised her that in the event she could not feel able or was unwilling to rear the child that he would do so without her assistance. On Monday,

March 2, 1992, the defendant Jane Roe went to a doctor located in Monmouth County, New Jersey. Subsequent to her visit, she advised the plaintiff that the doctor confirmed that she is pregnant and that the unborn child is approximately eight weeks post conception. The plaintiff has continued to counsel defendant Jane Roe and advised her that he offers support for her and the child in any way necessary.

5. On Wednesday, March 4, 1992, defendant Jane Roe advised the plaintiff that she had determined with certainty that she would seek an abortion. She has continuously and at all times acknowledged that the plaintiff was the father of her unborn child. On Wednesday, March 4, 1992, the defendant Jane Roe advised the plaintiff that she scheduled an abortion for the morning of Wednesday, March 11, 1992 at a location in Monmouth County owned, controlled and operated by the defendant XYZ Abortion Clinic, Inc. and its agents and employees.

6. The plaintiff has a legal and moral obligation to discharge his duties to his unborn child. During the week of March 2, 1992, the defendant Jane Roe advised the plaintiff that she thought that it was an equal obligation that they share the cost of the abortion. The plaintiff, a Catholic, has a deep belief that he has a moral duty

to avoid in assisting in the termination of the life of his own child. He further holds a religious belief that he has a moral obligation to do what is necessary by way of affirmative action to care for, nurture and preserve the life, welfare and best interests of his unborn child. He therefore advised the defendant Jane Roe that he could not in good conscience spend money to terminate the life of his child. He believes that it is his obligation to pay considerably larger sums of money to preserve the life of his child and therefore he began to seek counsel on Thursday, March 5, 1992. On March 6, 1992, he contacted the attorneys of record and retained their services, the following day, Saturday, March 7, 1992.

7. As a matter of fact, the plaintiff's child fathered with the defendant, Jane Roe, is, at the age of eight weeks, a complete living human being at early stages of development. The unborn child is a member of the human race, is a human being and is a person. The unborn child has been and is currently a separate human being from his or her mother, with a complete and separate identity. The unborn child enjoys constitutional protection under the Fourteenth Amendment of the Constitution of the United States and Article One of the Constitution of the State of New Jersey. As natural father, the plaintiff is acting as the guardian ad

litem of his unborn child. The State of New Jersey, which licenses, regulates and supervises the medical activity at and on the premises of the XYZ Abortion Clinic, Inc., licenses, regulates and supervises the nurses and doctors at XYZ Abortion Clinic, Inc., would deprive the plaintiff's child of his or her constitutional rights if the state fails to intervene at the request of the plaintiff by denying the injunction he seeks.

8. The plaintiff, as father of his child, possesses a constitutional right to continued companionship with his child, has a constitutional right to procreate, has a constitutional right to discharge his obligations to his child. In addition, the plaintiff has the constitutional right to freedom of religion, the freedom to exercise the religion as he sees fit as long as it doesn't interfere with the legitimate rights of the state, his child and the child's mother.

9. The unborn child has the constitutional right to life both under the State Constitution and the Federal Constitution. The plaintiff has both the legal and moral obligation to protect the child's life and has the constitutionally protected right both under the Fourteenth Amendment and the State Constitution to defend the life of his own child. The failure of the State of New Jersey to

enter injunctive relief preventing the taking of the life of the plaintiff's unborn child, would be a constitutional deprivation of both the rights of the father and the child.

WHEREFORE, the plaintiff demands judgment on this count against the defendant, Jane Roe as follows:

a. Enjoining her from seeking an abortion anywhere in the State of New Jersey until further order of the Court;

b. Enjoining her from taking any action directly or indirectly aborting the child either individually or with the assistance of others in the State of New Jersey or elsewhere;

c. Enjoined her from leaving the State of New Jersey until further Order of the Court;

d. Enjoining her from disclosing her true identity or the identity of the plaintiff as long as the unborn child is alive or until further Order of the Court;

e. Or any other relief that the court deems just.

SECOND COUNT

1. The allegations contained in the First Count of this Complaint are incorporated by reference as if set forth at length herein.

2. The defendants, XYZ Abortion Clinic, Inc., Joseph Blow and Richard Roe, individually and in concert have arranged to have scheduled a medical procedure at the XYZ Abortion Clinic, Inc. hospital facilities on Wednesday, March 11, 1992 for the purpose of terminating the life of the plaintiff's unborn child. Their direct and indirect participation is material to the defendant Jane Roe's plan to terminate the life of the child she carries, fathered by the plaintiff.

WHEREFORE, the plaintiff demands judgment on this count against the defendant, Jane Roe as follows:

a. Enjoining each of them, their agents and employees from assisting Jane Roe in an abortion anywhere in the State of New Jersey until further order of the Court;

b. Enjoining each of them, their agents and employees, from taking any action directly or indirectly aborting the child either individually or with the assistance of others in the State of New Jersey or elsewhere;

c. Enjoining each of them, their agents and employees from disclosing the true identity of Jane Roe, or the identity of the plaintiff as long as the unborn child is alive or until further Order of the Court;

d. Or any other relief that the court deems just.

CASSIDY, FOSS & SAN FILIPPO
Attorneys for Plaintiff

BY: /s/ Harold J. Cassidy
HAROLD J. CASSIDY

VERIFICATION

1. I am John Doe, the plaintiff in the above entitled matter.

2. I have read the foregoing Complaint and on my own personal knowledge, I know that the facts set forth herein are true and they are incorporated in this certification by reference.

3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ John Doe
JOHN DOE, a fictitious name of a real individual whose identity is disclosed in an affidavit simultaneously filed with the Court and submitted under seal

DATED: March 8, 1992

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JOHN DOE, a fictitious name of a real person Plaintiff vs. JANE ROE, a fictitios name of a real person, et al. Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. Civil Action CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF PLAINTIFF, JOHN DOE, IN SUPPORT OF APPLICATION FOR INJUNCTIVE RELIEF

John Doe, a fictitious name of a real person, being of full age, deposes and says:

1. John Doe is not my real name, but is a fictitious name that is being used for this law suit only. At the same time I file this certification, I file another certification which is submitted to the court in a sealed envelope which discloses my true name, present address, as well as the true name and address of the defendant named in this suit as "Jane Roe". I have filed an application with the court requesting that that particular certification be filed under seal and not be made part of a public record. Jane Roe is a

fictitious name of a woman that I have been dating since July of 1991. At the present time, she is eight weeks pregnant with my child. She has, under the circumstances described below, disclosed to me her intention to terminate the life of our child and the abortion procedure she seeks is scheduled for Wednesday, March 11, 1992. I seek to preserve the life of our child and ask the Court to enter an Order enjoining Jane Roe from submitting to the procedure and enjoining those employees of the stated hospital or abortion clinic from performing the abortion.

2. Firstly, I would like to comment on my beliefs concerning the importance of the preservation of the identity of Jane Roe. I seek to protect the identity of both the plaintiff and the defendants in this case for the best interests and well being of both Jane Roe and our infant child. For myself, my own privacy is not of importance. I ask that the court permit the suit to go forward in the name of John Doe, however, because I believe that once my identity is known the identity of my child and the baby's mother could be learned. I am advised by my attorneys that these pleadings are a matter of public record, and once in the public domain are discoverable by anyone who seeks them.

3. I am very concerned that Jane Roe's privacy and identity be kept anonymous. At the present time she is eight weeks pregnant with our child. I have offered to marry her and I have told her of my desire to fulfill my obligations as father, both in assisting with the raising of the child and in extending financial support, whether or not she decides to marry me. I am presently 38 years of age and Jane Roe is presently 32 years of age. However, I know that her decision to terminate the life of our child has been difficult for her. The plight of any unwed mother when she discovers she is pregnant is always one which requires compassion and understanding. This is particularly true with Jane Roe. I love her and I understand what a good person she is. I have no reason to believe that Jane is motivated by anything other than what is the right thing to do. I have expressed my beliefs at what is right and she has shared her thoughts with me. We are in disagreement. I do not believe it would be right for me or anyone else to deliberately make her circumstances more difficult than they currently are. I recognize that as the mother who is carrying the child she is in a different position that I am and the decision making process concerning the future life of our child may be more difficult for her. I ask that the Court honor my request that her

true identity as contained in my other certification that I filed with the court in a sealed envelope, not be disclosed. I also ask the court to take whatever steps that are necessary to see that other's don't disclose her name. This is not only for her sake but for the sake of our child.

4. I truly believe that it is important for our child that the fact of this law suit is never known by him or her. I hold out hope, and I possess a measure of trust, that this law suit may well result in saving the life of our unborn child. If that happy result is achieved, then I think it is important for the well-being of our child that he or she never know that this dispute took place. I fervently hope that Jane Roe voluntarily changes her mind, but if she does not and this suit is successful, in the long run I do not believe it is good for our child or Jane for the child to ever learn that the baby's mother intended to terminate his or her life. I therefore strenuously urge the court to do everything in its power to protect the identity of our unborn child. If it is necessary to protect my identity so it is not subsequently discovered, then I ask that the plaintiff's name be protected as well.

MY INTENTIONS AND THE RELIEF SOUGHT IN THIS SUIT

5. My purpose in filing this suit is to preserve the life of my child. I believe that that is both my legal and my moral obligation. Once our child's life is out of danger, I would seek to fulfill my obligations to my child. I shall live up to my financial obligations and shall take the responsibility of being a father to our child, whether or not Jane ever agrees to marry me. As far as my parenting role in the life of the child is concerned, it in large part depends upon Jane's wishes. I have been advised by my attorney that if Jane gives birth to our child, under existing New Jersey Law, and the circumstances of this case she essentially has the right to choose to be the primary custodian if we are not married. If Jane chooses to be the primary custodian of the child, I would respect her wishes and do the best job I can as a father in whatever role I can play within the limits of the court's permission. In the event Jane chooses not to be the primary custodian of our child, I would be more than delighted to fulfill that role. Naturally, I would welcome the circumstance in which both Jane and I can raise the child together. If I am not the primary custodian of the child, it is my intention to live up to my financial obligations as well as my obligations as a father.

6. In the current lawsuit, I seek to preserve the child's life. I have been advised by my counsel that a suit dealing with the custodial arrangement of the child (if a dispute were to arise) would wait until it has been determined if the child's life has been preserved.

BACKGROUND

7. Both Jane and I have had first marriages and both of us are divorced. I started dating Jane in July of 1991. Over the past year we have both expressed love and affection for one another. Even prior to the conception of our child eight weeks ago, we discussed marriage.

8. When Jane first told me that she was pregnant in February of 1992, I was very excited. Obviously we did not plan this pregnancy, but when I learned that I would become a father at the age of 38, I was overjoyed. The news, to me, was wonderful and caused not only joy, but celebration. I discussed marriage with Jane, but she expressed confusion and doubt. She didn't know if she was ready to raise the child and commit to marriage and motherhood. I love Jane and I have done the best I could to understand her feelings and the position she is in. I know that she faced, for her, a very difficult decision. If Jane actually obtains the

abortion, she may regret it the rest of her life. Whatever legal and moral rights she may have, she must make the decision for herself. What I seek to do in this suit is not to make decisions for her, but to exercise what I perceive to be my own fundamental obligations to my child, and obligations to myself. Whatever legal and moral rights she may have, they can only be viewed in the context of the consequence of her act upon our child and also on my own rights and obligations. I don't wish to denigrate her concerns she may have. When balanced, however, I believe that her concerns are far outweighed by the considerations of the loss of our child's life and the denigration of my own rights and perhaps, the denigration of my own sense of duty and sense of obligation.

MY DECISION TO FILE THIS SUIT

9. It was on Wednesday, March 4, 1992 that Jane told me with certainty that she would seek an abortion. Until that time I had believed there was a chance that I could persuade her that we could raise the child and she should not do anything to jeopardize the baby's life. She told me that she made an appointment to have the abortion and she gave me the identity of the clinic where it would be performed. She asked me to contribute to half of the costs of the abortion because "we are equally obligated." It was

on Thursday, March 5, 1992 that I decided to seek legal counsel. It was on that day that I made calls to secure an attorney and I retained counsel on Saturday, March 7, 1992.

10. My moral and legal obligations are clear. When Jane, without meaning any harm or hurt, suggested that I pay for half the costs of an abortion, I realized that I am morally obligated to refuse to assist the taking of the life of my own child. I would prefer and feel required to expend greater sums of money in an effort to save my child's life, rather than spend a mere couple of hundred dollars to take that life.

11. I believe that I have a moral and legal obligation to take whatever legal action is necessary to save the life of our child. I am a Roman Catholic and I believe in many of the teachings of the Catholic Church. I believe that life begins at conception and we all have an immortal soul. I do not believe that I am free to think that the obligations to our child are that of the child's mother only. My responsibilities exist independent of hers and my obligations include not only to refrain from assisting in terminating the life of our child, but taking whatever action is appropriate and necessary to preserve the child's life. A failure to do so would be a failure to discharge my legal and moral obligations. The beliefs that I

espouse in this particular paragraph are part of my religious beliefs and I believe that I will be held accountable if I do not discharge these obligations in a fair way.

12. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ John Doe
JOHN DOE, a fictitious name of a real person whose identity is disclosed in an accompanying affidavit presented to the court sealed.

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JOHN DOE, a fictitious name of a real person Plaintiff vs. JANE ROE, a fictitios name of a real person, et al. Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. Civil Action CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF PLAINTIFF, J M , THE PLAINTIFF DESIGNATED BY THE FICTITIOUS NAME

J M being of full age, deposes and says:

1. My name is J M and I am 38 years of age. My social security number is . My current address is with my mother at , New Jersey . I recently sold my residence in Long Branch and since March 1, 1992, six days ago, I temporarily , New Jersey known as the . I have been in .

2. I checked into the because it is near and I wanted to be close to my girlfriend and the mother of my child and

this particular time. It was Monday, March 2, 1992 that a doctor confirmed that my girlfriend, designated Jane Roe in the caption of this suit was pregnant with the child I fathered.

3. The woman designated Jane Roe in this case is V C, who resides at , New Jersey.

4. I first learned that V was pregnant at the end of February. V had first performed a test that was positive. Then a test was conducted in my presence which was also "positive". It was at that time that I felt elated and expressed my desire to marry V . It wasn't until March 2, 1992 that V was at a doctor's office in F . I don't remember the doctor's name, but V told me that the doctor's test was positive and the doctor confirmed that the baby was eight weeks old. On Wednesday, March 4, 1992, V told me that she definitely made up her mind that she would have an abortion. She knew how strongly I felt, but for her own reasons she felt that the situation wasn't right. She told me that she had an appointment for Wednesday morning March 11, 1992 at an abortion clinic in , New Jersey. The name of that clinic is the and is located at , New Jersey. In my effort to keep V identity protected and for her sake as well as the sake of our child, I am

asking the court to seal this certification to protect even the name of the clinic. The Orders that I seek, if granted, should not contain the name of the clinic because I fear that V 's identity would be learned. For that reason, I have requested that the form of an Order for an Injunction include restraints against all involved from disclosing the identity of the unborn child's mother.

5. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ J.M.
J M

Dated: March 8, 1992

CASSIDY, FOSS & SAN FILIPPO
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Attorneys for the Plaintiff

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Co-Counsel for the Plaintiff

J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF HAROLD J. CASSIDY, ESQ. SUBMITTED UNDER RULE 1:4-4(c) (FACSIMILE SIGNATURE)

Harold J. Cassidy, being of full age, deposes and says:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Cassidy, Foss & San Filippo and I am thoroughly familiar with the manner in which a certification was received from Dr. Jerome LeJeune from Paris, France.

2. The certifications in lieu of oath or affidavit that was submitted by Dr. LeJeune contained a signature which is a facsimile of the original signature.

3. This is to certify that Dr. LeJeune acknowledged the genuineness of the signature. I personally spoke to him on Wednesday morning, March 18, 1992. I certify to the court that if requested I shall secure an original signature from Dr. LeJeune. Naturally, there is a certain process and a certain period of time that this would take.

4. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Harold J. Cassidy
HAROLD J. CASSIDY

DATED: March 18, 1992

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Co-Counsel for the Plaintiff

J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF JEROME LEJEUNE

Jerome LeJeune, being of full age, deposes and says:

1. I am a resident of Paris, France. I am on the faculty of the Medical School at the University of Paris (France) and a professor at the Research Center of the Human Genetics and Brain Diseases, which has the following address:

Centre De Recherches
Genetique Humaine Et
Maladies De L'Intelligence

Institute De Progenes
45, rue des Saints-Peres
75270 Paris Cedex 06

2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony is attached to this certification.

3. All of the genetic information necessary and sufficient for a particular human being exists at the moment when the human life begins at conception. The life of each of us commences at the moment that the genetic information is complete and a unique individual is created. This event occurs when the head of the male sperm penetrates inside the female's ovum. The information carried by the father encounters in the same recipient cell the information carried or transmitted by the mother so that suddenly, almost instantaneously, a new constitution is spelled out in genetic terms.

4. The once held belief that a mother contributes to the make up of the child following conception is now known with certainty

to be false. Everything that is necessary to be a human being is present immediately after conception. Either the whole information is present for conception of a human being (and development to full stages of growth) at the moment after the entry of the sperm into the ovum or the genetic information is insufficient and no human being shall develop and conception will fail.

5. The completeness of the human being immediately upon conception is such that there is a specificity of both the species and the complete identity of the individual member within the species. Not only is it possible to identify the resultant cell after conception as being human in nature, the individual identity or person is known and can be identified. In each instance, this marvelous phenomenon at the moment of fertilization (conception) is a pure novelty which has never occurred before in the history of mankind: a new constitution of a personally devised constitution for a particular person. This new constitution is complete in all of itself which is capable of being identified, its genetic material being capable of being read and the makeup of chromosomes complete. We have, in short, a human being immediately after the moment of conception.

THE PROCESS OF FERTILIZATION

6. Just prior to conception there are thousands of sperm swimming around one single female egg and through the process of nature, one sperm is elected which will penetrate the egg or ovum. There is in this process of fertilization an extraordinary device employed by nature to protect the privacy of the life of the person immediately upon conception. The right of privacy is actually written into the law of nature. The egg, which is a little sphere of one and one-half millimeters in diameter, is protected by a transparent membrane which completely covers the egg. This membrane is known as the zona pellucida. Immediately upon a sperm burrowing inside the zona pellucida, the transparent membrane suddenly becomes physically changed. Within micro seconds it becomes completely impenetrable by any other sperm.

DNA AND THE SOURCE OF GENETIC INFORMATION

7. The necessary genetic information to create a human being is contained in DNA, a long thread molecule. Physically, it is analogous to a minute flat ribbon of tape that is used in a tape recorder. Inside the head of a sperm is a long thread of one meter or so which is so tightly coiled in twenty-three little pieces that the whole of its volume can be put upon the point of a needle. These twenty-three pieces are chromosomes. The ovum also contains

twenty-three little chromosomes. In addition, inside the ovum there are billions of molecules specialized which will recognize and be recognized by the signals given by the genetic make up. The information provided by the male sperm is approximately fifty billion bytes of information. However, the information contained inside the egg is much greater, so much so that it is presently uncountable, so that the greatest computers cannot hold the amount of information which is inside one reproductive cell once fecundation occurs.

8. This process is like a tape recorder which plays music. If one places a mini cassette on which the music of an artist such as Mozart is recorded and put it in a tape recorder, you experience the sound of a symphony. The tape itself has no notes of music and there are no musicians. Because there is a special code written on the tape, information is conveyed in such a way that the tape recorder will read it and make air move through a loud speaker. What is being experienced by the listener is not an orchestra, not musicians, not evidence of music, but the genius of the author. That is how life is played: inside the egg, which receives the tape band from the father and which has its own tape bands, there forms a sort of table or law of life. Within the egg is a tremendous

amount of information to be received and interpreted. The genetic information necessary to form the completed human being is not only the long ribbon of DNA (which through the analogy is the mini cassettes of the symphony) but information in the cell itself, which reads it. The cell is analogous to the magnetiscope of the tape recorder and possesses within it enormous information.

THE RECENT DISCOVERY OF THE JEFFREY METHOD AND BAR CODE PERMITS IDENTIFICATION OF THE MEMBER OF THE HUMAN SPECIES IMMEDIATELY AFTER CONCEPTION AND SUPPORTS THE CONCLUSION THAT A HUMAN BEING EXISTS AT CONCEPTION.

9. Approximately four years prior to the trial in this matter a Englishman named Jeffrey made a discovery and developed a technique which has the capability of determining the identity of a particular human being. Jeffrey discovered that in part of the chromosomes the DNA is repetitive. It can be repeated as much as one hundred times, so if harm is caused to some of the segments, some of the sequence will provide the genetic function and the human being will survive. In his work, Jeffrey developed a method of extracting DNA and a technique for examining it. The technique creates the ability to record unique traits of the individual being examined. Jeffrey's technique has proven that

each person is unique and that the sequence of the bars that he is able to identify is absolutely typical of the person being examined and is specific to the individual. That the identity of the person or the individualization of the member of the human race takes place at conception has been confirmed by the Jeffrey method.

METHYLATION OF CYTOSINE REPRESENTS A VERY RECENT DISCOVERY WHICH EXPLAINS THE SCIENCE OF GENETICS PREVIOUSLY UNKNOWN. IT SUPPORTS THE CONCLUSION THAT THE HUMAN BEING IS A COMPLETE PERSON AT THE MOMENT OF CONCEPTION.

10. Totally unknown as recently as four years ago (and unavailable when Roe v. Wade was decided) was the process of Methylation of Cytosine (which is contained on a piece of DNA). What has been learned is that the DNA is even more sophisticated than previously suspected and the messages are written "letter by letter", piece by piece. There is basic information with indications that some information must be read immediately and some information must be read at a later time. What is meant by the Methylation process is that everything to make this particular human being exists at fertilization, but is not read at the instant of conception. This discovery was never expected ten years ago and never predicted: that, in fact, the father's genes underline

instructions to immediately produce the membranes inside which the embryo will develop itself (its space capsule) and to make the placenta which is the body by which it will take the nutrients from the vessels of the mother. That information is contained or underlined in the sperm not in the mother's egg. The male genetic material therefore builds the membranes which becomes the shelter and the placenta which is the food gathering system. The female information acting in concert with the male information provides the mechanism for the development of the parts of the physical anatomy.

11. All of this information and the sophisticated directive mechanisms is contained in the first cell. The significance of this information is that it was discovered that it is definitely ruled out that there can be a genetic constitution made from one parent only. It is not possible in an egg to put two pronuclei from the mother only. It will not be a human being. It can make "parts" such as skin, hair, teeth, some nervous cells, but not at all build a form and there will be no child. Essentially the same thing is true without the maternal nuclei. It will not form a human being. So it is absolutely required that, in the first cell, there be the DNA

underlined by Methylation in the male way and the DNA Methylation in the female way for there to be a human being.

12. The extraordinary observation made is that the only cell in all of the life of a person in which those two Methylation systems from father and from mother are present together inside one cell is in the very first cell which gives life to a person. At each progressive stage of development this Methylation is erased and replaced progressively as cells learn by a cascade of reaction to specialize so that some cells will develop to form the brain, another to make the liver, another to make bone, etc. It has been learned that the male way of "spelling" is obligatory for muscles so that even in the female information which builds the muscles has to be underlined in the paternal way. This understanding contradicts any previous notions that fetal development occurs only through the mother. It is now clear that the child is a complete human being programmed for life from conception.

THE SCIENCE OF GENETICS IRREFUTABLY CONCLUDES THAT A FERTILIZED EGG, IMMEDIATELY AFTER THE MOMENT OF CONCEPTION, IS A MEMBER OF THE HUMAN SPECIES, IS A HUMAN BEING AND IS A PERSON.

13. To conceptualize the person at the age of eight weeks post conception, we should describe what the child looks like. The child was only the size of a person's thumb measured from its head to it's "rump", one inch. Inside the human embryology the child can be visualized as a tiny human being with fingers, toes, a face and palm prints that you could read with a microscope. You would be able to see the child's sex. The child has a heart beat and with the mother there are two rhythms between her heart and the child's which are detectable. The child's heart beats about one hundred and forty times a minute if it is a boy and about one hundred and sixty times a minute if it is a girl. An abortion of an eight week only fetus kills a member of the human species. That there is completeness of the human being and its identity as a person from the moment of conception when its chromosomal make up is complete not only as to the species but as to the individual member of the human race is irrefutable. There exists a specificity of the uniqueness of a human being at the beginning of life, at fecundation, at fertilization at conception.

14. I understand that this certification is being submitted in the New Jersey Courts in a law suit entitled J.M. v. V.C., W.M.C., et al., currently pending in the Superior Court of New Jersey,

Chancery Division, before The Honorable Patrick J. McGann, J.S.C. I understand that this case is a civil action brought by the father of an unborn child seeking to enjoin an abortion. It is to be made part of the record on an Order to Show Case and in opposition to a motion to vacate the restraints.

15. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Jerome LeJeune
JEROME LEJEUNE, M.D.

DATED: 18-03-92

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J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF JEROME LEJEUNE

Jerome LeJeune, being of full age, deposes and says:

1. I am a resident of Paris, France. I am on the faculty of the Medical School at the University of Paris (France) and a professor at the Research Center of the Human Genetics and Brain Diseases, which has the following address:

Centre De Recherches
Genetique Humaine Et
Maladies De L'Intelligence

Institute De Progenes
45, rue des Saints-Peres
75270 Paris Cedex 06

2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony is attached to this certification.

3. I incorporate by reference the testimony I gave in the matter of State v. Loce in this certification. I understand that this certification is being submitted in the New Jersey Courts in a law suit entitled J.M. v. V.C., W.M.C., et al., currently pending in the Superior Court of New Jersey, Chancery Division, before The Honorable Patrick J. McGann, J.S.C. I understand that this case is a civil action brought by the father of an unborn child seeking to enjoin an abortion. It is to be made part of the record on an Order to Show Cause and in Opposition to a Motion to Vacate the Restraints.

4. I certify to Judge McGann and the New Jersey Courts that the testimony that I gave in the matter of State of New Jersey v.

Alexander Loce, et al., which is attached to this certification, is truthful and accurate and I incorporate it by reference.

5. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Jerome LeJeune
JEROME LEJEUNE, M.D.

DATED:

JEROME LEJEUNE, M.D., Ph.D., having been duly sworn according to law, testified as follows:

THE JUDGE: Doctor, I heard you pronounce your own name and we butchered it. So you may have a seat.

All right, you may proceed counsel.

DIRECT EXAMINATION BY MR. MULLANEY:

Q Doctor LeJeune, could you please for the record, state your name and how to spell it?

A Your Honor, my name is Jerome LeJeune.

Q We did butcher that one.

A Yes. I am a professor of fundamental genetics in the Children's Hospital of Paris and the Faculty of Medicine of Paris.

And I began as a pediatrician and then I became a geneticist. Now I am a pediatrician and a geneticist.

And in my consultation, which is probably the biggest in the world for mentally retarded children having difficulty due to a chromosomal mistake, we examine every year 2000 children, and we have record of 30,000 of them.

So our job is really to try to understand what makes the nature of every human being; why some of them are afflicted by constitutional difficulty, and to try later to treat that, if we can, so that we would be able to some day to bring them back to normal; and to give them what nature has refused to them.

Q Dr. LeJeune, could you please tell the Court a little about your educational background?

A As I staid I was MD and PhD, and have been always in Paris as a student.

And later when I finished by studying and I got my degree in medicine and genetics, I was representative of France in the United Nations scientific committee on the danger of atomic radiation, because I was a geneticist.

And in that function, international function, I came very often to the United States to go to the UN and I met one professor of California Institute of Technology.

And I was invited to give the first course of human genetics in Cal Tech because in his highly educated university they had not yet had any course of human genetics.

They had a lot of course in fundamental genetics. I was the first professor of fundamental genetics in Cal Tech.

Q As part of your serving on this committee, Doctor, did you have opportunity to go to the Kremlin in moscow and meet with Mr. Brezhnev?

A yes. That is as a geneticist, I was vice-president of the Genetic Congress in Moscow and I was known by my fellow professor of genetics in Moscow and because I am a member o the Pontifical Academy of Science and because I was a member of the, of a special group that we had to study of the dangers of atomic war I was sent by the Pope, John Paul II, to Moscow.

It was around three days after Mr. Jaruzelski had declared the war against people in Poland; in other words, declared a state of war against its own population.

And because we had prepared the reports about the dangers of -- as a specialist I was only speaking of the genetic dangers of the atomic war, then the Holy Father wanted me to be presenting a report to all the powers of the world who were having the atomic power.

And so some of us of the Pontifical Academy of Science went to America to see Mr. Reagan and some came to France or England to China and India. And I was sent by the Holy Father to see Mr. Brezhnev.

And it was a very curious situation. But I am not going to talk too much about that.

Q Dr. LeJeune, you have been credited with the first discovery of the first chromosomal abnormality in man.

Could you please tell the court about your discovery of Down's Syndrome?

A Yes. Down's Syndrome is a very peculiar disease in the sense that the baby who are born with it owe their difficulty to an excess of genetic material.

And it was long ago, nearly thirty years ago that I discovered that they had an extra chromosome and this chromosome is now known as number 21.

The classification of chromosome was not yet established at that moment because it was the first disease to be discovered to be due to this chromosomal defect.

And those babies, in fact, suffer because they have too much of those table of the law of the life which we call chromosomes.

And to make a very complex story short I would say that inside the chromosomes are written in a very special ribbon, which is DNA, all the tricks of the trade to be a human being, if those chromosomes are human chromosomes.

If they are chimpanzee chromosomes, all the tricks to be a chimpanzee are written.

Q Doctor LeJeune, we are trying to qualify you as expert at this point.

A Yes.

Q We will get into that in a minute. I have to cut you off because it's an interesting story. For your discovery of Down's Syndrome did you win any awards?

A Well, I had the honor or receiving the Kennedy Prize from the hands of the late president and, because of this discovery, and got also the William Allen Memorial medal in this country which is the highest prize that you can get in genetics in the world.

It is given by the American Society of Human Genetics in this country. I received it in San Francisco.

Q What year was that, Doctor?

A Oh, I am not good with the remembering the times. It was, if I'm correct, around '62 or '64. I think that the Kennedy Prize was '64.

Q Could you tell the court -

A That's -- I's sorry. I don't remember.

Q Could you tell the Court of any other boards or academies of which you're a member?

MR. BANGIOLA: I am prepared to stipulated the witness as an expert in genetics. Excuse me.

MR. MULLANEY: Your Honor, it is just not that often we get someone with the stature of Dr. LeJeune. But if the Court is willing to recognize him, I offer the Court Dr. LeJeune as expert in genetics and human reproduction.

THE JUDGE: And prosecutor is willing to stipulate that?

MR. BANGIOLA: Without objection.

THE JUDGE: The doctor who discovered Down's Syndrome is an expert in genetics.

MR. BANGIOLA: Doesn't seem like much of a stretch.

THE JUDGE: I will accept that stipulation and welcome you to the Morristown Municipal Court.

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J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF BERNARD NATHANSON, M.D.

Bernard Nathanson, M.D., being of full age, deposes and says:

1. I am a doctor of medicine licensed to practice medicine in the State of New York. I am board certified in obstetrics and gynecology and I maintain my practice at 133 East 80th Street, New York, New York.

2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony and some cross examination has been attached to another certification and submitted to the court in this case.

3. My understanding is that this affidavit is being used to support an application by the plaintiff in this case to restrain an abortion of his unborn child. I understand that this certification will be filed in opposition to a motion to vacate the restraints, and that this certification will be used in support of permanent restraints.

4. Current knowledge of modern medicine and its recent developments all support and are consistent with the conclusion that an individual member of the human race, one separate and apart from its mother, has a life immediately following conception.

THE ANATOMY OF THE FEMALE REPRODUCTIVE SYSTEM

5. The uterus, the key organ of the female reproductive system, is a pear shaped organ which has at its lower end the cervix. The cervix is a narrowing which resembles a "bottle neck".

It contains within it a cavity and is positioned above the vagina which is the lower most point of the female reproductive system.

6. At the top of the uterus on both sides are fallopian tubes. They function as a conduit for descending eggs from the mother's ovaries. The ovaries are located above and at the outer limits of the fallopian tubes on both sides. The function of the ovaries are to manufacture, or produce the female eggs or ova. The egg "pops" out of the ovary and is caught by the tube.

7. The fertilization of an egg actually takes place within one of the fallopian tubes itself, in an outer portion of it which is designated the "ampulla".

THE DEVELOPMENT OF THE UNBORN CHILD IN THE FIRST EIGHT DAYS OF LIFE

8. During the first eight days following conception, the unborn child develops additional cells, descends from the fallopian tube, burrows into the lining of the uterus and there is an "interfacing" of the child and mother's circulation.

9. It is while the child is in the early days of life that it (descriptively referred to as "the fertilized egg") begins to "divide" the numbered cells go from one to two, four, then eight and then

sixteen. When the development of the child reaches the sixteenth cell stage, the child is referred to by the biological term "morula".

10. At this stage of development, the unborn child is approximately three days of age and proceeds into the uterus where it continues to divide and develop. By the sixth day, the early human being is actually in contact with the lining of the uterus which is known as the endometrium period as the division progresses and the baby attaches to the uterine wall. The developing human being is within the form of a cell mass referred to as a "blastocyst", which actually is in contact with the uterine wall. At this point there will shortly be a recognizable unborn child and the outer layer of cells, which is referred to as a trophoblast, will form the placenta.

11. As the blastocyst burrows into the lining of the uterus it erodes the maternal blood vessels and nexus begins to form between the mother and the child resulting in an "interface" between the mother's circulatory system and that of the child. It is at this stage of development, eight or nine days of age following fertilization, that the unborn child is detectable within the mother through normal testing methods.

12. It is through the detection of a pregnancy hormone referred to as "beta sub unit HCG" that medical confirmation that *there is a growing living human being within the maternal uterus* is possible. During the first eight or nine days of the child's development this tiny member of the human race has exhausted its own stored up oxygen and nutrients. So at this age the bridge is established between the unborn baby and the mother and the baby begins to extract the nutrients and oxygen from her. In order to accomplish this link, the trophoblast (the outer layer around the blastocyst) actually scouts into the tissue of the uterus for blood vessels. The trophoblast has the power to open up maternal blood vessels which causes hemorrhaging around the baby. From the blood which is surrounding the child at that point the child begins to extract certain necessary nutrients, chemicals and even oxygen.

THE STAGES OF GROWTH OF THE UNBORN CHILD IS A SEAMLESS CONTINUUM FROM CONCEPTION TO BIRTH

13. The English language is burdened with terms developed at times in the history of medicine when it did not possess the current level of knowledge. Consequently, there are terms to describe the particular "stages of growth". However, it was emphasized at trial that it is important for one to understand that

"stages of growth and development" of the new human being is really a "seamless continuum".

14. Immediately upon conception the "fertilized egg" has been referred to as a zygot. At the age of three days the child has developed from a single cell to a sixteen cell individual termed "morula". The term "embryo" connotes the developing human being from the morulus stage to about the end of the eighth week following fertilization. The term "fetus" is used to describe the stage of the development of the human being from the end of the eighth week up to the time that the baby is actually delivered whatever the age of the child at birth.

15. The terms zygot, morula, embryo and fetus are only terms of development of the same human being just the same as the terms "infant", "child", "adolescent" and "adult" also describe different stages of development of the human being. Development of the person from the moment of conception is "seamless" with continuing growth and aging of the person from the moment of conception.

TECHNOLOGICAL DEVELOPMENTS SINCE 1976 (THREE YEARS AFTER ROE V. WADE) HAS RESULTED IN GREATER KNOWLEDGE OF THE NATURE OF THE UNBORN CHILD IN THE EARLY STAGES AND HAS PERMITTED SOPHISTICATED

SURGERY ON CHILDREN ONLY FOUR AND FIVE MONTHS AFTER CONCEPTION.

16. There were crude ultrasound devices that were available in the early 1970's dating back to its development in the 1950's. These instruments permitted limited access to knowledge about the child during the early stages of growth following conception.

17. In 1976 there was a major development in technology called "real time ultrasound". Whereas the old technology showed static pictures, the new technology actually created a motion picture which could detect not only movement but function, breathing, urination, swallowing and other functions of the human existence. It became possible to trace the development of the unborn person from literally the very beginnings (at conception) all the way through the child's development up to its birth. This technology, currently in color, permits detection of such things as blood flow through a fetus and embryo. Doctors using the instrument can actually see the red blood on the screen itself as the vessels transmit the flow of blood through the child's circulation.

18. This level of visualization permits examination and diagnosis of the child's illnesses while in its mother's womb.

Medicine can watch how the child functions including such intricate detail as the operation of the tiny little valves and the heart as it flops up and down pushing blood. Abnormalities in things such as heart valves can be detected and rather sophisticated operations are currently performed on unborn children at the developmental stages of four and five months. It was not until 1990 that the first book was published describing this sophisticated fetal surgery in which the mother is anesthetized, her abdomen surgically opened and the uterus incisioned. In these operations the amniotic fluid is suctioned out and the baby is actually removed from the mother's uterus while he or she is still attached by the umbilical cord. The baby's abdomen or chest (whatever bodily organ is defected) is incised surgically, repaired, and the child is replaced into the mother's uterus, the amniotic fluid put back around the baby, and the mother repaired. The child is able to proceed through the pregnancy to, at or near full term. These operations are done at relatively early stages of development of the child.

19. In addition to the development, since Roe v. Wade, of the sophistication of ultrasound technology, medicine has developed the additional modality of the electronic fetal heart monitor which

permits sophisticated investigation of the fetus. The electronic fetal heart monitor tracks the fetal heart rate from moment to moment and it can detect reactions of the unborn child to such things as different types of music.

THE FUNCTIONING OF THE UNBORN CHILD AT EIGHT WEEKS OF AGE POST CONCEPTION

20. The child at eight weeks is a clearly recognizable human being even to the human eye. The child's brain has formed (the child's brain continues to form following normal birth all through childhood and adolescence). An important fact is that at eight weeks the brain is producing a substance, "substance P", which is the "chemical messenger for pain".

21. The child at the embryonic stage of development has arms, legs, fingers and toes which are separate and distinct. The child has a nose and an external ear and, as Dr. Nathanson put it, the child "is, in fact,...quite obviously one of us".

22. The child, in every way, is a human being that is very small in physiological terms. The child functions the same way that an adult human being functions. The child at that age excretes urine, and its heart beats regularly as it had been since the age of three weeks following conception. The blood is

circulating and brain waves have been isolated and detected for children which are eight weeks following conception. The child essentially does everything that an adult human being does but on a smaller scale.

DEVELOPMENTS IN IMMUNOLOGY DEMONSTRATE THE CHILD IS ALWAYS, THROUGHOUT ITS DEVELOPMENT FROM THE DATE OF CONCEPTION, A SEPARATE AND DISTINCT PERSON FROM THE MOTHER.

23. The pre-born child is always a separate person from the child's mother. Circulations are always separate and they never mix. In fact, if they do mix it can be lethal to the baby and even to the mother. Although the relationship is symbiotic and an important one, the child is a separate and distinct person and is not a part of the mother. This relationship is clearly disclosed by developments in immunology. The white blood cells in the immune system of the mother are capable of recognizing and distinguishing the mother from its non-self, the child. That is the principle reason why the immune system does not kill the organs of the mother. The white blood cells actually recognize parts of the mother as being the same human body to which it is a part. It also distinguishes a body that is not part of itself. If a foreign substance is put into a person's body the white blood cells will

recognize it and immediately attack it in an "attempt to throw it out". The foreign body is not self. When the pregnancy progresses and the blastocyst implants, (when the child is eight or nine days old following conception), chemical messages are sent to various systems in the mother and the immune system (the white blood cells included) galvanizes because it recognizes that there is a foreign body within the mother. A concerted immune attack is focused on the new human being and the objective of the immune system is to expel the foreign body. Each one of us who were unborn babies have undergone this attack. The unborn baby erects a defense against the attack. The trophoblast which constructs the placenta serves as an immunological wall. Graphically it stops the attack. Most human beings survive the attack of the mother's immune system. Those which do not survive are expelled which is the phenomenon that is referred to as "spontaneous miscarriages". A spontaneous miscarriage involves a person who is unborn but fails to survive the attack by the mother's immune system.

ONLY AFTER 1984, ELEVEN YEARS AFTER ROE V. WADE, DID MEDICINE UNDERSTAND THAT THE ABORTION OF THE UNBORN CHILD EVEN AT THE EARLY STAGES OF LIFE WITHIN THE MOTHER'S WOMB (INCLUDING AN EIGHT WEEK

OLD CHILD) INVOLVES A BRUTAL, VIOLENT AND PAINFUL DEATH OF A HUMAN BEING.

24. Mainly as a result of information learned during abortions that were performed after the Supreme Court decision in Roe v. Wade, it is now clear that the abortion of an unborn child, even at the early stages of the child's life following conception, involves a brutal, violent and painful death of a human being. It was not until 1984 that members of the medical profession began to document the abortion experience. In that year, Dr. Bernard Nathanson commissioned a doctor who was performing a legal abortion at a clinic to perform the abortion under ultrasound with the modern technology then available. During one day's work the commissioned doctor taped the ultrasound abortions of twenty-five to thirty human beings. A vivid depiction of one of the abortions was incorporated into a film entitled "The Silent Scream". As a result of the use of this technology in the taping of the abortion it is documented that the unborn child is moving around in the womb in the embryonic fluid. We now know from this technology that the unborn child begins to move within the embryonic fluid at the age of eight weeks.

25. In the abortion process the doctor puts an instrument into the womb to dilate the cervix. The doctor breaks the water and the embryonic fluid is permitted to flow out. Then the doctor uses a suction apparatus into the uterus. On the film it can be seen that the baby moves away from the suction apparatus. After the baby moves from the apparatus, the suction is turned on and a tremendous negative force is used to pull the baby from its living quarters.

26. In the suctioning process, the arms and legs of the human being are being torn off and then subsequently the body is being ripped apart.

27. In this specific abortion filmed in 1984, the head of the baby was too large to be suctioned out so the doctor had to take a metal instrument called a polyp forcep to reach into the uterus to locate the baby's head and put the forcep around the baby's head and then close the forceps. The film reveals that the child's head is actually crushed in the process. It was not until 1984 that there was a reliable documentation of what actually occurs in abortion.

28. I performed or supervised seventy-five thousand abortions. These abortions were performed when this technology was not

available (before 1972). During an abortion a human being's life is terminated.

29. It is now clear that as a matter of fact, the abortion of an unborn child in its mother's womb subjects a human being to "unimaginable agony" and it ends the life of a person in the most barbaric and bloody manner possible.

30. The unborn child's death and the pain to which it is subjected is documented in the movie "The Silent Scream". In the film it can be seen that the mouth of the young unborn baby is open. It is a dramatic, an arresting moment - a heart stopping moment - because it can be detected that the child was grimacing and was evidencing the most unimaginable agony that one can envision.

31. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Bernard Nathanson
BERNARD NATHANSON, M.D.

DATED:

CASSIDY, FOSS & SAN FILIPPO
225 Broad Street, Box 896
Red Bank, NJ 07701-0896
(908) 741-2525
By: Harold J. Cassidy
Attorneys for the Plaintiff

Patrick J. Mullaney, Esq.
1 Madison Avenue
Morristown, NJ 07960
(201) 984-8777
Co-Counsel for the Plaintiff

J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF BERNARD NATHANSON, M.D.

Bernard Nathanson, M.D., being of full age, deposes and says:

1. I am a doctor of medicine licensed to practice medicine in the State of New York. I am board certified in obstetrics and gynecology and I maintain my practice at 133 East 80th Street, New York, New York.

2. On April 13, 1991 I testified in the Municipal Court in Morristown, New Jersey, in the matter of State of New Jersey v. Alexander Loce, et al. The testimony in that case has been memorialized in a transcript. The portion of the transcript that contains my direct testimony is attached to this certification.

3. I incorporate by reference the testimony I gave in the matter of State v. Loce in this certification. I understand that this certification is being submitted in the New Jersey Courts in a law suit entitled J.M. v. V.C., W.M.C., et al., currently pending in the Superior Court of New Jersey, Chancery Division, before The Honorable Patrick J. McGann, J.S.C. I understand that this case is a civil action brought by the father of an unborn child seeking to enjoin an abortion. It is to be made part of the record on an Order to Show Cause and in Opposition to a Motion to Vacate the Restraints, and in support of an application for a permanent injunction.

4. I certify to Judge McGann and the New Jersey Courts that the testimony that I gave in the matter of State of New Jersey v. Alexander Loce, et al., which is attached to this certification, is truthful and accurate and I incorporate it by reference.

5. I hereby certify that the foregoing statements made be me are true. I am aware that if the foregoing statements made be me are wilfully false, I am subject to punishment.

/s/ Bernard Nathanson
BERNARD NATHANSON, M.D.

DATED:

BERNARD NATHANSON, M.D.

having been duly sworn according to law, testified as follows:

THE JUDGE: With respect to the speaking and movement in my courtroom, this is a court of law. It looks like someone's den with the fireplace, but it is a court of law.

I expect silence so we can hear the testimony, the direct examination and cross-examination.

All right, you may begin, counsel.

DIRECT EXAMINATION OF MR. TRAYNOR:

Q Doctor Nathanson, please state your full name and your address.

A Bernard N. Nathanson, M.D., 133 East 80th Street, New York, City.

Q And, Doctor, where are you licensed to practice medicine?

A In New York and Pennsylvania.

Q What is your educational background?

A I was educated at Cornell University. I then went to the McGill University Medical College in Montreal, Canada.

Q What degree did you receive from Cornell University?

A I did not receive a degree. It was pre-medical education. I received a degree of M.D. at McGill in 1949.

Q And did you do any post-graduate medical training?

A Yes I did. I had a year as a rotating intern at the Michael Reece Hospital in Chicago, a years as an assistant resident in surgery at the New York Hospital Cornell Medical Center; four years of residency in obstetrics and gynecology at the Woman's Hospital in New York City.

That residency was interrupted by two years of service in the U.S. Air Force, during which time I was chief of obstetrics and gynecology in the Northest Air Command.

And after this rather lengthy period of training and service, I entered the private practice of obstetrics and gynecology in New York City at the end of 1957, substantially older than I was when I started.

Q Doctor, what is your specialty?

A Obstetrics and gynecology.

Q Doctor, do you have a board certification?

A I do.

Q What is that?

A I was certified by the American Board of Obstetrics and Gynecology in April 1960.

Q Do you have any hospital affiliations?

A I do.

Q And those are?

A I am senior attending obstetrician and gynecologist at the Saint Vincent's Hospital Center which is part of the New York Medical College.

I am senior obstetrician and gynecologist at the St. Luke's Roosevelt Hospital, which is part of Columbia University College of Physicians and Surgeons.

I'm associate attending obstetrician and gynecologist at the New York Hospital Cornell Medical Center.

And I was chief of the obstetrical service at the St. Lukes' Hospital for a period of five, for or five years, from 1973 until the end of 1977.

Q Do you have any professional associations?

A I do.

I am a member of the American Medical Association, the New York State and County Medical Societies.

I am a fellow of the American College of Surgeons.

I am a fellow of the American College of Obstetricians and Gynecologists; and a very lengthy list of really quite minor, other organizations.

Q Have you published any writings in your field?

A Yes, I have.

Q Could you give us some of those?

A I published, I believe, 15 or 16 scientific articles, several books, and assorted other material in the area of bio-ethics especially.

Q Have you published in the area of fetal development and embryology and fetology?

A Yes, I have, and I have also lectured on this in respect to my academic appointments.

Q Have you received any awards or honors in your field?

A Well, yes. I have been appointed assistant or clinical assistant professor of obstetrics and gynecology at the Cornell University Medical College which I currently hold.

I also hold a professorship at the New York Medical College where I am clinical associate professor of obstetrics and gynecology.

So I have professorships at two universities.

MR. TRAYNOR: I offer the doctor as an expert witness in the field of obstetrics and gynecology.

THE JUDGE: Any objection?

MR. BANGIOLA: No objection.

THE JUDGE: All right, the doctor will be accepted as an expert in obstetrics and gynecology.

You may proceed.

BY MR. TRAYNOR:

Q Doctor, in addition to indicating your training in your chosen field, do you have any training in abortion procedures and any practice, any experience in that practice?

A Yes, I have -- and I say this immodestly, but I probably have more experience in the area of abortion and abortion technology than perhaps anyone in this country, owing to the fact that I was the director of the largest abortion clinic in the United States for a period of two years; and published early on in the medical literature, scientific papers on techniques of abortion, ambulatory abortion technology, complications of abortion, and a whole range of issues dealing with abortion and satellite issues.

Q Thank you, Doctor.

Doctor, would you describe the anatomy of the female reproductive system?

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J M , individually as guardian ad litem of his unborn child Plaintiff, vs. VC; WMC; JOSEPH BLOW RICHARD ROE, fictitious names of real individuals who are employees and agents of the defendant corporation Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. CIVIL ACTION ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS

THIS MATTER having been opened to the Court by Cassidy, Foss & San Filippo, Harold J. Cassidy, Esq., appearing, and Patrick J. Mullaney, Esq., attorneys for the Plaintiff, and the Court having reviewed the Plaintiff's Verified Complaint, the Certifications, the sworn testimony presented, Plaintiff's Brief and the arguments of Plaintiff's counsel; and the Court having determined for good cause

showing that: (1) it clearly appears from the specific facts shown by the sworn testimony and the Verified Complaint that the Plaintiff is the unwed natural father of an unborn child; that the Defendant, V C is the unwed mother of that unborn child; that the Defendant has been pregnant for approximately eight weeks; that the Defendant V C intends to abort her pregnancy without the consent of the natural father on or about March 11, 1992; that the Plaintiff, the natural father opposes the abortion of the unborn child and wishes to raise and support the child; that the Plaintiff wishes to assert his rights as the natural parent of the child; that the Plaintiff, as the natural parent, wishes to assert the rights of the unborn child; and therefore, that immediate and irreparable harm will result to the Plaintiff; (2) Plaintiff has demonstrated a substantial likelihood of success on the merits; (3) Plaintiff has demonstrated that any harm to the Defendants resulting from the imposition of the temporary restraints requested by Plaintiff is outweighed by the harm which would result to the Plaintiff if such restraints were not imposed; and (4) the imposition of the temporary restraints against the Defendants does not contravene the public interest;

IT IS on this 7th day of March, 1992 at 3:35 P.M.

ORDERED that Plaintiff's application for a temporary restraining order shall be and hereby is granted as follows:

A. Defendant V C is hereby prohibited and enjoined from accepting or requesting any service, any surgical or medical procedure, ingesting drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of her pregnancy or which will otherwise, directly or indirectly, result in the termination of her pregnancy;

B. Defendant WMC , Howell, New Jersey is hereby prohibited and enjoined from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C;

C. Each and every director, officer, employee, agent and/or representative of Defendant WMC , New Jersey is hereby prohibited and enjoined from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C

or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C;

IT IS FURTHER ORDERED that on forty-eight (48) hours' notice to Plaintiff's counsel, Defendants may appear and move the dissolution or modification of this Order; and

IT IS FURTHER ORDERED that the restraints imposed by this Order shall expire on the 30th day of March 1992 at 4:00 P.M., unless extended by further order of this Court; and

IT IS FURTHER ORDERED that the defendants are enjoined from disclosing, directly or indirectly, the identity of the plaintiff, John Doe, and the true identity of Jane Roe, and Ordered to take all reasonably precautions to prevent an inadvertent disclosure of them; and

IT IS FURTHER ORDERED that V C is enjoined from leaving the State of New Jersey for the purpose of terminating the life of her unborn child; and

IT IS FURTHER ORDERED that the Defendants or their attorneys show cause before this Court at the Superior Court of New Jersey at the Monmouth County Court House in Freehold, New Jersey, on March 30, 1992, at 1:30 o'clock P.M., why an Order should not be entered:

A. Permanently prohibiting and enjoining Defendant VC from accepting or requesting any service, any surgical or medical procedure, ingesting drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of her pregnancy or which will otherwise, directly or indirectly, result in the termination of her pregnancy;

B. Permanently prohibiting and enjoining Defendant WMC , New Jersey from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C;

C. Permanently prohibiting and enjoining each and every director, officer, employee, agent and/or representative of Defendant WMC , New Jersey from rendering any service, performing any surgical or medical procedure, dispensing any drug or substance of any kind or taking any action which will directly or indirectly result in the abortion of the pregnancy of V C or which will otherwise result, directly or indirectly, in the termination of the pregnancy of V C; and

IT IS FURTHER ORDERED that this order shall not be disclosed or revealed to anyone other than defendants counsel where the names of the parties are visible or revealed; and

IT IS FURTHER ORDERED that Defendants file an Answer to the Plaintiff's Complaint, and submit any briefs and/or certifications or affidavits in opposition to the above relief, not later than March 26, 1992,^ and that Plaintiff submit any reply briefs and/or certifications or affidavits not later than March 27, 1992 at 4:00 p.m.

at 4:00 p.m.

/s/ Patrick J. McGann, Jr.
J.S.C.

ORDER ON EMERGENT APPLICATION

JOHN DOE, a fictitious name of a real person, individually; JOHN DOE a fictitious name of a real person, guardian ad litem for his unborn infant child

vs.

JANE ROE, a fictitious name of a real person, et al.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.
MOTION NO.
BEFORE PART: E
JUDGES: SHEBELL
SKILLMAN
D'ANNUNZIO

EMERGENT APPLICATION FILED: March 13, 1992 BY: Cassidy, Foss & San Filippo AND Patrick J. Mullaney, Esq.

ANSWER(S) FILED: BY:
BY:

APPEARANCE ONLY: BY: Harold J. Cassidy, Esq.

DATE ARGUED: March 13, 1992

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 13th DAY OF MARCH, 1992, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR LEAVE TO APPEAL AND TO PROCEED WITH FICTITIOUS NAMES	GRANTED	DENIED	OTHER
	X		X

SUPPLEMENTAL: The parties to this action, their representatives, and the court shall use the initials of the parties and not their full names or other means of identity. The real names of the parties shall be maintained as a sealed record of the court. The order of the Chancery Division dated March 9,1992 is hereby summarily reversed.

FOR THE COURT:
/s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR., J.A.D.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-66-92

J.M., individually and as guardian ad litem of his unborn unborn child
Plaintiff,

vs.

V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation

Defendants.

TRANSCRIPT OF

ORDER TO SHOW CAUSE

DATE: March 19, 1992
PLACE: Freehold, New Jersey

B E F O R E:

THE HONORABLE PATRICK J. McGANN JR., J.S.C.

APPEARANCES:

Harold J. Cassidy, Esq. (Cassidy, Foss & San Filippo) and
Patrick J. Mullaney, Esq.
Attorneys for the Plaintiff J.M.

Lewis H. Robertson, Esq. (Evans, Osborne & Kreizman)
Attorneys for the Defendant V.C.

JAMES V. OVERBY, C.S.R.
OFFICIAL COURT REPORTER
MONMOUTH COUNTY COURT

HOUSE

FREEHOLD, N.J. 07728
LICENSE #XI00692

3
Line 10 to 21

The motion addressed to J.M. individually we'll hear argument on. I am frank to say I think that probably has some merit to it. He may not having standing individually maintaining the action simply because he's the biological father.

The argument that's going to be made on behalf of the unborn child is essentially that times have changed since Roe against Wade. That the issue which Roe against Wade passed up on the grounds that the Supreme Court at that time was not in a position to make a definitive ruling on life, you know, when it begins and things like that.

* * *

6
Line 21 to 23

Having said that, I think I will stop and then I'd like to address first of all the question which I said was somewhat tenuous of the standing of J.M. individually.

* * *

7
Line 13 to 22

MR. CASSIDY: Judge, this aspect of the case really presents a question of first impression in this jurisdiction for sure and probably in this country post Webster.

THE COURT: An issue as to his standing.

MR. CASSIDY: As to whether he has constitutional rights that are implicated.

THE COURT: You say it your way. I say it my way. How he's got standing as a busy body, somebody might say except he happens to be the biological father.

* * *

8
Line 16 to 17

THE COURT: The question is now does he have standing to say to her don't abort that child.

* * *

13
Line 18 to 22

THE COURT: I'll rule on that because I want it out of the way. The companionship argument has no basis at all in fact here. The

genetic relationship has no basis at all for standing. Now, go onto whatever other grounds you have.

* * *

15
Line 10 to 15

THE COURT: We're not there, the same argument as companionship. We're not there. There is no child that anybody is responsible to pay for or to hug.

MR. CASSIDY: Except I think that if we were to address the issue that way, we're avoiding the question of fact, this is a human being.

* * *

17
Line 5 to 10

THE COURT: But that again is a circular argument because it assumes he's defending life and we're not at that point yet.

MR. CASSIDY: If there is a question of fact on this record, I think that the record is clear that this is a human being.

* * *

Line 15 to p. 22 Line 7

MR. ROBERTSON: I'll be very brief and very summary. First of all, of course we're in a trial court bound by applicable precedent.

Secondly, it's dangerous to divorce holdings from their facts because the facts give rise to the policies that were considered in order to lead to the holdings and all the cases that were cited for the proposition that the father has a right because of companionship, his right of procreation, his right to discharge his duty to his child and perhaps an Article I right.

The courts were dealing with a personal being and here there is no personal being. And I think that a totally different consideration would operate were a court in proper circumstances to analyze the father's standing.

I suggest that thee has been no case cited in any jurisdiction at least in an appellate court where a father in circumstances such as these has ever been held to have standing.

And for those reasons again, in summary fashion, the father has no standing.

THE COURT: I'll grant the motion to dismiss J.M. as a party plaintiff and I'm satisfied that that's the proper thing to do. All of the cases in which the issue has arisen in the past have been husband type cases and those cases, of course, have an additional element to them and that is, in a sense the contractual agreement between husband and wife in which we're partners in this whole idea of marriage, whole idea of procreation and because I'm your partner, I have something to say about what occurs during our marriage.

Even in those cases, husbands have not be afforded standing. This is one step removed from that and aside form the genetic connection and aside from the fact he's interested as a person because of the relationship that he had with the person who now bears the unborn, that's not any sort of a constitutional basis.

The constitutional rights alleged in his behalf or as Mr. Robertson says, rights that courts have talked about in connection with children who are available, my expression, for hugging. That's the context in which those cases went forward and not in this context at all.

So I will grant the motion to dismiss J.M. as an individual plaintiff.

42
Line 7 to p 56 Line 15

THE COURT: It seems to me that the judicial resolution aside from all of the arguments is the resolution that should be designated on the return date of an order to show cause as to whether or not certain temporary restraints should be continued as an injunctive order.

The injunctive order is effectively to V.C. don't abort that, I'll say fetus because that's a neutral term. Should that injunction continue to remain in place.

That depends on whether or not we have a lawsuit because if I do not appoint a guardian ad litem or say to J.M. that while you designate yourself guardian ad litem of the unborn, that's not real.

If I don't do that, then we have no case and if we have no case we have no injunction. It's true that the U.S. Supreme Court has not ruled on the issue at least in Roe v. Wade, it doesn't.

It specifically left the field open. It decided not to get involved in the field and the language that it used, maybe it's

language that now some nineteen years later, it's easier to question it but when you read the language, it doesn't sound terribly judicial.

"We need not resolve the difficult question of when life begins." Well, if you say that, then you never get into the question of personhood and you never get into the question of constitutional protection.

Whatever life is there in V.C., right there, if it is life, whatever is there in V.C. if the normal nine month term comes to pass and if there is no abortion involved, voluntary abortion in the meanwhile, miscarriage, a baby will be born, male or female and get a name.

And from then on be known as Mary Jones. We don't apply the name Mary Jones to what is becoming Mary Jones, we say only when the birth process take place, only when he slaps the baby's bottom, cut the umbilical cord, then Mary Jones is okay.

Arguments that are presented by way of the affidavit submitted by Drs. LeJeune and Nathanson say that it's Mary Jones right from the moment of conception. It doesn't have a name; but from the time of birth it's going to be Mary Jones from the time it

dies and birth is just one intervening step almost like going to high school, maybe, during lifetime. It's a step along the way of life.

Now, that's what they say. And on a reading by an unlettered person in the medical field such as myself and I'm not deprecating, that's the truth, on the reading what they say and according to their expertise which I don't have, they say life is life.

That it begins the moment of conception and goes on until death is declared. Now, we have spent a great deal of time in figuring out when people are dead. We find that the legislature passes an act which defines when death occurs.

The legislature hasn't passed an act defining when life occurs. But the fact that we address the problem, legislature having on one end a lot of court cases which had to do with defining when death occurred too where the legislature acted, which is not something unusual that courts have to act first.

But we have spend a lot of time on that, w in this state, and I think most states do claim we are protective of life and we are. I think in the cases with the children in the hospital, children of Jehovah's witnesses, child need blood transfusion, simple thing.

Parents say no, we can't do that, against our religion. The courts say you keep your religious beliefs, we're interested in the child's rights. Child gets a transfusion.

There are cases which have said, for example, where a mother is still carrying he infant in her womb, refuse medical treatment which will be deleterious to the child in the wound, there are orders that have been entered that say you've got to take that treatment even if it's against your religious beliefs because it affects the unborn. And we're there to preserve life.

The entire argument, and it's an excruciating argument over the death penalty and is an argument in favor of life. The reason the Supreme Court is going through all of the gyrations, and I don't have any quarrel with what they are doing, because they say we don't want to be the cause of somebody's death because we support life. That's the principle.

So with all of that and with the affidavit in front of me, the I fall back to those guiding principles which have to do with injunctive orders issued by judges at the outset of litigation.

And I've said here on the record many times, the first principle for any judge who is asked to put an injunction in place at the outset of litigation, the first principle is don't do it. That's

first. Because you haven't had a compete hearing and an injunctive relief usually is plenary relief.

At the end of the case somebody wins and somebody loses. And the judge says you're enjoined from doing that permanently. You're finished. That is the general principle; but there are exceptions and the exceptions are very clear and the principles are well known.

If you have to enjoin in the beginning of a case, do so only to prevent immediate and irreparable harm and injury. Now, you say as far as the unborn, that's in the womb of V.C. if I don't enjoin there will never be a possibility of birth and there will never be a possibility of personhood beyond the birth period as the constitution would protect.

So harm in the sense of the unborn is irreparable. Now, maybe the process of nature will mean that that child will never be born. Maybe there will be a miscarriage some place along the line. That's something we're not talking about. We're talking about doing something affirmative and active to prevent a natural development.

The questions is, is that a development of life and the affidavit say positively if it's so, if what Dr. LeJeune says is so,

then at the moment of conception all of the full blown characteristics of that individual when the individual is ultimately born and grows and comes to the peak of its abilities, physical abilities, all of that is decided at the very moment of conception.

His analysis of DNA and comparison of the tapes and signals and things like that is fascinating and maybe a complete hoax on his part. Other people may not agree with it but it really is very interesting thing to read.

And he says that's when it starts and the whole future is predicted except if it's hit by a bus or gets killed, there is an accident or falls off a cliff.

But the whole process of mental growth, the facial features, the color of hair, all of that is right there in that moment of conception. If you say that and if it is so, then you say to yourself there is something protectable there. At least whatever is there should have a right to a hearing to determine whether it is life.

Whether LeJeune is right or wrong, whether Nathanson is right or wrong, but with those affidavits it looks like if I go have the abortion, irreparable harm as to whatever is there.

So the first standard is met, so to speak, for our purposes today. The second is a standard even if there is perceptible irreparable harm don't do it, judge, unless you find there is a probability of ultimate success.

Now in the ordinary run of the mill chancery cases, I have said that calls upon the chancery judge to exercise an educated hunch as to what is likely to occur. And the exercise of that judgment, that discretion is left to a veteran chancery judge y appellate courts.

And they say he's had experience along the line. He has a feel for cases like this; and, therefore we'll leave the first decision up to that judge, him or her to decide whether he thinks or she thinks there is a possibility of ultimate success.

It involves some judicial crystal ball gazing but against the background of experience and a knowledge of people perhaps and a knowledge of the law.

So I do it and every other chancery judge does it, hunching through to a probability of ultimate success. In some cases it's clear. In other cases it's not clear. And in those cases injunctions are granted.

In some cases it's clear there will never be a probability of ultimate success so don't grant the injunction. And then the third standard if you find the first two exists, then still before you impose the injunction, sit back and thing of the consequences of what you do.

What happens to the one person if you impose the injunctive order. What happens to the other one. And I use person now just in a legal since, not definitive here. What happens to the other person if you don't' impose the injunctive order.

Those opinions and those principles apply here. So the irreparable harm arguably is there and on the papers before me certainly is there because they say from moment of conception all the way along. So irreparable harm to what is there, I think, is quite clear.

Now, the probability of ultimate success. That's a mixed question. It's a mixed question of fact and law because I keep saying what is there. I keep saying based upon what is before me and that's a one-sided presentation, I recognize.

Now are there equally qualified experts who will come in and say LeJeune is wrong. Nathanson is wrong. That's not the

way it works. That's not the biology of it. What's the word I'm looking for, the embryology of it.

I think that LeJeune is an embryologist. And I will have to listen and say LeJeune looks pretty good on paper. When he comes here, he doesn't turn out to be so hot or Nathanson looks pretty good on paper, but when he comes to testify, he doesn't stand up against the others who are more qualified, more expert and more involved in deciding this business of when does life begin.

But I do know that the U.S. Supreme Court has never done that. I do know that the New Jersey Supreme Court has never done that. Neither of those courts has had a record which is made in a trial court in a judicial fashion in which the judge evaluates qualifications.

A judge evaluates the worth of testimony and a judge makes a call one way or the other. The judge can't sit and say we need not resolve the difficult question of when life begins. A trial Judge can't do that. The issue is there. The trial judge has to one way or the other resolved it. He could back off the field and say gee, I don't know fellows.

That's what trial judges are. So our Supreme Court in Right to Choose v. Byrne states at page 299 of the opinion in 91 N.J. Reports, "We do not presume to answer the profound questions about the morale, medical and societal implications of abortions nor do we undertake to determine when life begins or at what point fetus is a person."

They backed off because there was no factual record at all before them. That was the question of funding abortions and there was no record before them at all as to whether the question of when life begins or when a fetus becomes a person but that record had to be made. It can't be made unless there is a litigated case.

Now, in this case the question is, is there a probability of ultimate success and I am frank to say I don't know the answer to that.

The unborn has to prove, through its guardian ad litem, that it has life. It has to prove, through its guardian ad litem, at what point a court can say that life is equated with a person because there may be a difference between the two, I don't know.

But the irreparable harm is so overwhelming if the fetus is ultimately able to say yes there is life or the court can say yes

there is a life, yes there is a person, to say I'll never give it chance by allowing the abortion means the issue can never be reached and the answer can never be given and then reviewed by an appellate court one way or the other.

So if I don't we owe it to the unborn here, I owe it to people who constantly ask this question to start and make a record and to start the process where somewhere, some day the definitive answer may be given.

So for that reason even though the probability of ultimate success is either way, the scales are balanced, if you wish, the irreparability of the harm is so strong. And then we get to the balancing issue.

Now, I'm not passing over that quickly because during the time we're making a nice record here that fetus is growing in V.C. And she may be getting more anxious and it maybe creating medical difficulties. You know, I am aware to that possibility too and certainly an application is always open to come back to me and say you know release the injunction because we got a problem here.

An argument can be made when we get back here to the hearing and we'll talk about when he get back here, an argument

can be made when we get back here, judge, at some point in time no matter how nice the question is and how interested in all the lawyers and folks are that we're talking about, V.C. we've got look at her and her interests too and she does have interests.

So for our purpose today I will continue the injunctive order which I previously entered as a temporary restraint and I think, as I've said, there is a basis for doing that. That was never don in Roe v. Wade.

There was never a guardian ad litem. Keep coming back to the point where nobody has ever really made the record. There is also the argument that has been touched upon in the briefs and that is the question or personhood and when the label sticks so that it becomes constitutional and protectable is something that may vary between the U.S. Constitution and the New Jersey Constitution.

You know our courts have said many times that while we all give deference to the United States Constitution because it is the law of the land, there is no prohibition in that constitution from the states acting under their constitution giving it more expanded rights perhaps than the U.S. Constitution and our state has not been slow to do that either. So there is that argument.

So that I am willing to undertake the fact finding issue as to the -- what I don't know, that is what is life, when life begins and the legal issue that turns upon those facts as to when personhood arguably attaches so that constitutional rights are created.

But at the very least when we talk about the unborn, we can talk about a potential life and we can talk about a potential person because unless the process is interrupted that's what would happen.

So that potentiality is protectable by the injunctive order until we can determine whether we can drop, as I've said, the adjective or not.

So we'll continue the injunctive order. Now, the big thing is keeping V.C. in mind, when can we have a factual hearing and we need an answer on behalf of V.C.

MR. ROBERTSON: I understand.

THE COURT: And I can take it -- may I just digress. The clinic which is restrained doesn't appear because they say whatever the Judge says we'll do.

MR. CASSIDY: The lawyers for the clinic advised me that thy have no intention of appearing because they are only being

restrained with respect to this one particular individual and so they have know intention of being heard. They'll not file an Answer.

THE COURT: They'll do whatever the judge says.

MR. CASSIDY: Of course, we would want the injunction against them.

THE COURT: And to continue and I will for that purpose.

MR. CASSIDY: In fact -- no, I want to ask for them --

THE COURT: Leave it the way it is because that's sufficient. But timing?

MR. ROBERTSON: Your Honor, I'm in somewhat of an unusual position. I served in a sense as a first line of defense for V.C. and although I may participate in emergent application to the appellate division from this court's order today, that probably will be the extent of my participation. I'll be substituted by other counsel and --

THE COURT: You'll have to rally the troops kind of.

MR. ROBERTSON: So to speak. And I would ask I be allowed to defer giving the court an answer as to when an answer can be filed and when a hearing can be held.

I will put other counsel in contact with Mr. Cassidy as well as the court as soon as I can.

THE COURT: I recognize Mr. Cassidy has backing for his position and I'm sure that V.C. will have backing for her position now that people know it's going to be a fact finding hearing.

MR. ROBERTSON: I'm sure that will be the case.

THE COURT: All right, prepare the order any way so I can sign it and the interlocutory appeal can go forward.

MR. CASSIDY: Should we at least set a conference date so we can talk about streamlining the hearing?

THE COURT: I have to confer with the somebody. I hear it said Mr. Robertson will now be contacting the somebody and letting us know as soon as you can who the lawyer to whom we're supposed to direct --

MR. ROBERTSON: Your Honor, I did submit a form of order with my notice of motion and I phrased it such it would be used either grant or deny the relief question. I'd like to leave with a copy of the filed Order.

THE COURT: I can enter it.

MR. CASSIDY: While your Honor is at it, may I ask your Honor to certify the portion of Your Honor's ruling that was adverse to my client. Could you certify that interlocutory order is final.

THE COURT: Why don't you just cross appeal. There is a notice of appeal from this order and then cross appeal as to that. Certifying things as final gets trial judges into big trouble with appellate judges sometimes. So I would much rather you simply cross appeal.

Only thing that's not covered in the order is that which Mr. Cassidy would like to cross appeal on and that is the dismissal of J. M. as an individual party. Why don't you give me an order.

MR. CASSIDY: Is it possible for you to just write plaintiff individually dismissed so that we have one order to deal with? I would appreciate it, Judge.

THE COURT: Further ordered the plaintiff's complaint shall not be dismissed, however, J.M. as an individual does not have standing to prosecute the action. Good enough?

- CERTIFICATE -

I, JAMES W. OVERBY, do hereby certify that the foregoing is a true and accurate transcript of the within proceeding, as taken by me stenographically on the date and place hereinbefore set forth.

/s/ James W. Overby
JAMES W. OVERBY, C.S.R.
Official Court Reporter

DATE: March 23, 1992

EVANS, OSBORNE & KREIZMAN
180 White Road
Little Silver, NJ 07739
(908) 741-9550
Attorneys for Defendant V.C.
pl\vc.2

J.M., individually and as guardian ad litem of his unborn unborn child Plaintiff, vs. V.C.; W.M.C.; JOSEPH BLOW AND RICHARD ROE, fictitious fictitious names of real individuals who are employees agents of the defendant corporation Defendants.	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92 CIVIL ACTION - ORDER

This matter having been opened to the Court by Evans, Osborne & Kreizman, attorneys for Defendant V.C., Lewis H. Robertson, Esq. appearing, on notice to Cassidy, Foss & San Filippo, attorneys for Plaintiff J.M., Harold J. Cassidy, Esq. appearing, and the Court having considered the moving papers and

any response and reply thereto and argument of counsel, and it appearing to the Court that certain relief is warranted; it is on this 19th day of March, 1992,

ORDERED that the restraints heretofore entered by this Court's Order of March 9, 1992, shall be and are herewith continued; and it is further

ORDERED that the Plaintiff's Complaint shall not be dismissed however, J.M. as an individual does not have standing to prosecute the action.

/s/ Patrick J. McGann, Jr.
PATRICK J. MCGANN, J.S.C., P.J.Ch.

ORDER ON EMERGENT APPLICATION

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent, Cross-Appellant,

vs.

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of defendant corporation

Defendant-Appellants, Cross-Respondents

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-742-91T5
MOTION NO. M-3884-91
M-3886-91
BEFORE PART: E
JUDGES: SHEBELL
SKILLMAN
D'ANNUNZIO

EMERGENT APPLICATION FILED: 3/20/92 BY: Lewis H. Robertson (Evans, Osborne & Kreizman) for defendant)

ANSWER(S) FILED: BY: Harold J. Cassidy (Cassidy, Foss & San Filippo) and Patrick J. Mullaney for Plaintiff

BY:

APPEARANCE ONLY: BY:

DATE ARGUED: 3/23/92

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 23rd DAY OF MARCH, 1992, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR LEAVE TO APPEAL FROM TRIAL COURT'S ORDER OF MARCH 19, 1992 CONTINUING

RESTRAINTS HERETOFORE ENTERED AND DENYING DEFENDANTS' APPLICATION FOR DISMISSAL OF COMPLAINT	GRANTED	DENIED	OTHER
	X	X	X

SUPPLEMENTAL:

We grant the motion of defendant, V.C., for leave to appeal solely with respect to the part of the trial court's order of March 19, 1992, which continues the restraints contained in the trial court's order signed on March 7, 1992 and entered on March 9, 1992. Pursuant to R. 2:11-2, we elect to consider the merits of the appeal. We summarily reverse the part of the trial court's order of March 19, 1992 continuing restraints and vacate paragraphs (A), (B) and (C) of the court's order of March 7, 1992 as well as the further paragraph of that order which prohibits V.C. from leaving the State of New Jersey for the purpose of terminating her pregnancy. We are satisfied that the restraints granted by the trial court are clearly unjustified in view of Roe v. Wade, 410 U.S. 113, 35 L.Ed. 2d 147 (1973), Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 49 L.Ed. 2d 788 (1976) and Right to Choose v. Byrne, 91 N.J. 287 (1982).

Plaintiff having represented to this court that he would make an immediate application for emergent relief to the Supreme Court of New Jersey if the restraints granted by the trial court were dissolved and having requested a brief stay of the dissolution of the restraints issued by the trial court until 4 p.m. on March 24, 1992.

We deny defendant's motion for leave to appeal from the part of the trial court's order denying her motion to dismiss the complaint.

Except for the part of this order which denies defendant's motion for leave to appeal from the trial court's denial of her motion to dismiss the complaint, Judge Shebell dissents for the reasons expressed in his attached opinion.

FOR THE COURT:
/s/ Stephen Skillman
STEPHEN SKILLMAN, J.A.D.

ORDER ON EMERGENT APPLICATION

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent, Cross-Appellant,

vs.

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of defendant corporation

Defendant-Appellants, Cross-Respondents

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-742-91T5
MOTION NO. M-3884-91
M-3886-91
BEFORE PART: E
JUDGES: SHEBELL
SKILLMAN
D'ANNUNZIO

EMERGENT APPLICATION FILED: 3/20/92 BY: Lewis H. Robertson (Evans, Osborne & Kreizman) for defendant)

ANSWER(S) FILED: BY: Harold J. Cassidy (Cassidy, Foss & San Filippo) and Patrick J. Mullaney for Plaintiff

BY:

APPEARANCE ONLY: BY:

DATE ARGUED: 3/23/92

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 23rd DAY OF MARCH, 1992, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR LEAVE TO CROSS APPEAL FROM THAT PORTION OF THE COURT'S ORDER OF MARCH 19, 1992

WHICH DISMISSES PLAINTIFF'S COMPLAINT BROUGHT IN HIS INDIVIDUAL CAPACITY

GRANTED	DENIED	OTHER
	X	

SUPPLEMENTAL:

Judge Shebell dissents from this order for the reasons expressed in his attached opinion.

FOR THE COURT:

/s/ Stephen Skillman
STEPHEN SKILLMAN, J.A.D.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
AM-742-91T5
M-3884-91
M-3886-91

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent,
Cross-Appellant,

vs.

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of defendant corporation

Defendant-Appellants,
Cross-Respondents

SHEBELL, J.A.D., dissenting.

I cannot agree with the majority that emergent relief is appropriate and that the restraints imposed by the trial judge should be removed. The law pertaining to abortion is in a state of flux. See Webster v. Reproductive Health Servs., 492 U.S. 490, 106 L.Ed.2d 410 (1989); Planned Parenthood of S.E. Pa. v. Casey,

947 F.2d 682, 695, 698 (3d Cir. 1991). The United States Supreme Court's holding in Roe v. Wade, 410 U.S. 113, 35 L. Ed.2d 147 (1973) in the view of many represents an erroneous interpretation of the Constitution-inventing a constitutional right to an abortion, now exclusively in the mother, where none previously existed or could even have been contemplated by our founding fathers.

This court should not at this time rush to judgment. In this case, one of the recognized parents cries out for the right to "preserve" and thereafter "nurture" the child which the other seeks to irretrievably put beyond the reach of all courts. Cf. Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 49 L.Ed.2d 788 (1976).

The courts or our Legislature, if given the opportunity, perhaps even because of this very case, may recognize an unborn child's right to life, or at least, the right of both parents to be heard on the issue. I would, therefore, continue the restraints wisely imposed by the trial judge. There is no other way the issue can be preserved in this case. Should the action of any court be less than to protect the subject matter of the controversy presented to it?

Further, I would grant leave on the cross-appeal of the natural father individually, and I would summarily reverse and remand so that all of the relevant issues may be reviewed on a complete record.

SUPREME COURT OF NEW JERSEY
M-960/970/971 September Term 1990

J.M., Individually and as
guardian ad litem of his
unborn child,

Plaintiff-Respondent,

v.

V.C., a fictitious name of a real
individual;

Defendant-Movant,

and

W.M.C., a fictitious
name of a real corporation;
JOSEPH BLOW and RICHARD ROE,
et al.,

Defendants.

This matter having been duly presented to the Court, and the Court having determined that plaintiff has failed to demonstrate a reasonable likelihood of prevailing on the merits of his complaint, and the Court having concluded that under current law, plaintiff's proffer of proofs would not realistically assist or inform the court in its determination of the legal issues properly before it;

And good cause appearing;

It is ORDERED that the motion for leave to appeal the denial of defendant's application to dismiss the complaint of J.M. as guardian ad litem (M-969) is granted; and it is further

ORDERED that leave to appeal having been granted, the motion for a summary reversal of the trial court's order (M-970) is granted, and the complaint is dismissed; and it is further

ORDERED that the motion to vacate the temporary stay of the Appellate Division(M-971) is granted.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of March, 1992.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-961/2/3/5/6/7/8 September Term 1990

J.M., Individually and as guardian ad litem of his unborn child,

Plaintiff-Respondent,

v. ORDER

V.C., a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW and RICHARD ROE, et al.,

Defendants-Respondents

This matter having been duly presented to the Court, and the Court having determined that plaintiff has failed to demonstrate a reasonable likelihood of prevailing on the merits of his complaint,

And good cause appearing;

It is ORDERED that the motion for leave to appeal the dissolution of restraints by the Appellate Division (M-961) is denied; and it is further

ORDERED that the motion for summary reversal on the issue of restraints (M-962) is dismissed as moot; and it is further

ORDERED that the motion for a stay (M-963) is denied; and it is further

ORDERED that the motion for leave to appeal the dismissal of the complaint of plaintiff as an individual (M-965) is denied; and it is further

ORDERED that the motion for summary reversal of the order of partial dismissal by the trial court (M-966) id dismissed as moot; and it is further

ORDERED that the motion for leave to file an overlength brief (M-967) is granted; and it is further

ORDERED that the motion to strike affidavits submitted by defendant (M-968) is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of March, 1992.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-988/989 September Term 1990
35,000

J.M., etc.,

Plaintiff-Movant,

v.

CORRECTED
ORDER

V.C., et al.,

Defendants-Respondents

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to file a supplemental brief (M-988) is denied; and it is further

ORDERED that the motion for reconsideration (M-989) is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of March, 1992.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER,
Clerk of the Court

Area Code 202
479-3011

March 25, 1992

Mr. Harold J. Cassidy
Cassidy, Foss & San Filippo
225 Broad Street, PO Box 896
Red Bank, NJ 07701-0896

RE: J.M.,
v. V.C., et al.
Application No. A-713

Dear Mr. Cassidy:

The application for a stay in the above-entitled case has been presented to Justice Souter, who on March 25, 1992 endorsed thereon the following:

"Denied
DH Souter
25 March 1992"

Very truly yours,

WILLIAM K. SUTER, Clerk

By
/s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

NOTE - FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

A-183

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER,
Clerk of the Court

Area Code 202
479-3011

March 25, 1992

Mr. Harold J. Cassidy
Cassidy, Foss & San Filippo
225 Broad Street, PO Box 896
Red Bank, NJ 07701-0896

RE: J.M.,
v. V.C., et al.
Application No. A-713

Dear Mr. Cassidy:

The application for a stay in the above-entitled case has been presented to Justice Thomas, who on March 25, 1992 endorsed thereon the following:

"3/25/92
Denied
Clarence Thomas"

Very truly yours,

WILLIAM K. SUTER, Clerk

By
/s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

NOTE - FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 5, 1992

Mr. Harold J. Cassidy
225 Broad Street
P.O. Box 896
Red Bank, NJ 07701

Re: J.M.
v. V.C.
No. 91-2034
J.M., Guardian ad Litem of his unborn child
v. V.C.
No. 91-2040

Dear Mr. Cassidy:

The Court today entered the following order in each of the above entitled cases:

The petition for a writ of certiorari is denied.

Very truly yours,

William K. Suter, Clerk

A-185

ORDER ON MOTION

J.M., Individually and as guardian ad litem of his unborn child,
v.
V.C., W.M.C., JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of the defendant corporation,

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4772-91t5
MOTION NO. M-6599-91
BEFORE PART: A
JUDGE(S): ANTELL
DREIR
VILLANUEVA, t/a

MOTION FILED: AUGUST 3, 1992
ANSWER(S) FILED: BY:
BY:
BY:
BY:
ADMITED TO COURT: SEPTEMBER 14, 1992

O R D E R

THIS MATTER HAVE BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 16 DAY OF SEPTEMBER, 199 2, HEREBY ORDER AS FOLLOWS:

MOTION BY XXXXXXX/RESPONDENT V.C., FOR SUMMARY DISPOSITION

GRANTED	DENIED	OTHER
X		X

SUPPLEMENTAL: The motion for summary disposition is granted and the determination presented for review is summarily affirmed.

FOR THE COURT:
/s/ Melvin P. Antell
MELVIN P. ANTELL P.J.A.D.

Monmouth County
C-66-92

ORDER ON MOTION

J.M., Individually and as guardian ad litem of his unborn child,
v.
V.C., W.M.C., JOSEPH BLOW and RICHARD ROE, fictitious names of real individuals who are employees and agents of the defendant corporation,

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4772-91t5
MOTION NO. M-6599-91
BEFORE PART: A
JUDGE(S): ANTELL
DREIR
VILLANUEVA, t/a

MOTION FILED: AUGUST 21, 1992
ANSWER(S) FILED: SEPTEMBER 1, 1992 BY: V.C.
BY:
BY:
BY:
ADMITED TO COURT: SEPTEMBER 14, 1992

O R D E R

THIS MATTER HAVE BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 16 DAY OF SEPTEMBER, 199 2, HEREBY ORDER AS FOLLOWS:

MOTION BY APPELLANT/XXXXXXXXX
J.M., TO FILE ANSWER TO MOTION FOR SUMMARY DISPOSITION NUNC RPO TUNC, TO SUPPLEMENT THE RECORD AND TO ACCERLATE DISPOSITION

GRANTED	DENIED	OTHER
X		

SUPPLEMENTAL:

FOR THE COURT:

/s/ Melvin P. Antell
MELVIN P. ANTELL P.J.A.D.

Monmouth County
C-66-92

National Sanctity of Human Life Day, 1988

By the President of the United States of America

A Proclamation

America has given a great gift to the world, a gift that drew upon the accumulated wisdom derived from centuries of experiments in self-government, a gift that has irrevocably changed humanity's future. Our gift is twofold; the declaration, as a cardinal principle of all just law, of the God-given, unalienable rights possessed by every human being; and the example of our determination to secure those rights and to defend them by every human being; and the example of our determination to secure those rights and to defend them against every challenge through the generations. Our declaration and defense of our rights have made us and kep us free and have sent a tide of hope and inspiration around the globe.

One of those unalienable rights, as the Declaration of Independence affirms so elequoently, is the right to life. In the 15 years since the Supreme Court's decision in *Roe v. Wade*, however, America's unborn have been denied their right to life. Among the tragic and unspeakable resultsin the past decade and a half have been the loss of life of 22 million infants before birth: the pressure and anguish of countless women and girls who are driven to abortion; and a cheapening of our respect for the human person and the sanctity of human life.

We are told that we may not interfere with abortion. We are told that we may not "impose our morality" on those who wish to allow or participate in the taking of the life of infants before birth: yet no one calls it "imposing morality" to prohibit the taking of life after people are born. We are told as well that there exists a "right" to end the lives of unborn children: yet no one can explain how such a right can exist in stark contradiction of each person's fundamental right to life.

That right to life belongs equally to babies in the womb, babies born handicapped, and the elderly or infirm. That we have killed the unborn for 16 years does not nullify this right, nor could any number of killings ever do so. The unalienable right to life is found not only in the Declaration of Independence but also in the Constitution that every President is sworn to preserve, protect and defend. Both the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life wihtout due process of law.

All medical and scientific evidence increasingly affirms that children before birtth share all the basic attributes of human personality - that they in fact are persons. Modern medicine treats unborn children as patients. Yet, as the Supreme Court itself has noted, the decision in *Roe v. Wade* reacted upon an earlier state of medical technology. The law of the land in 1988 should recognize all of the medical evidence.

Our Nation cannot continue down the path of abortion so radically at odds with our history, our heritage, and our concepts of justice. This sacred legacy, and the well-being and the future of our country, demand that protection of the innocents must be guaranteed and the the personhood of the unborn be declared and defended throughout oru land. In legislation introducted, at any request in teh First Session of the 1200th Congress, Ihave asked the Legislative branch to declare the "humanity of the unborn child and the compelling interest of the several states to protect the life of each person before birth." This duty to declare on so fundamental a matter falls to the Executive as well. By this Proclamation I hereby do so.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by vitue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim and declare the unalienable personhood of eveyr American, from the moment of conception until nature death and I do proclaim, ordain, and declare that I will take care that the Constitution and laws of the United States are faithfully executed for the protection of America's unborn childre. Upon this act, sincerrely believed to be an act of justice, warranted by the Constitution. I invoke the considerate judgment of mankind and the gracious favor of Almighty God, I also proclaim Sunday, January 17, 1988, as

National Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that day in their homes and places of worship to give thanks for the gift of life they enjoy and to reaffirm their commitment to the dignity of eveyr human being and the sanctity of human life.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of January, in the year of our Lord ninteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

/s/ Ronald Reagan

IN THE UNITED STATES DISTRICT COURT OF GUAM
FOR THE TERRITORY OF GUAM

MARIA DOE, on behalf of herself and all others similarly situated, et al,	)	CIVIL ACTION NO. 90-00013
Plaintiffs,	)	
vs.	)	DECLARATION OF MICHAEL V. L. BENNETT
JOSEPH F. ADA, et al.,	)	
Defendants.	)	

1. I am a Professor and Chairperson of Neuroscience at the Albert Einstein College of Medicine in the Bronx, New York. I am a member of the National Academy of Sciences. Attached to this Declaration as Exhibit A is a copy of my curriculum vitae, which includes a list of some of my publications. I am submitting this Declaration in support of plaintiffs' motion fo summary judgment and permanent injhunction against public Law 30 134 ("the Act").

2. There is no scientific consensus that a human life begins at conception, at a given stage of fetal development, or at birth. The question of "when a human life begins" cannot be answered by reference to scientific principles like those with which scientists predict pianetary movement. The answer to that question will

depend on each individual's social, religious, philosophical, ethical and moral beliefs and values. These answers to not represent any "scientific" truth, because they are based uponv alues and beliefs, notupon science alone.

3. The only "consensus" that may be said to exist among scientists on teh question of when a human life begins is that science alone cannot answer that question. This is demonsotrated by the response of the scientific community when in 1991 a United Staes senate subcommittee hold he3arings on a hbill to declare "that present day scientific evidence indicates a significant liklihood that actualhuman life exists from conception.' See The Human Life Bill: Hearings Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 97th Cong., 1st Sess. (1981) (hereinafter Hearings). As distinguished scientists testified, science alone does not provide the answer to this question.

4. For example, Dr. Leon Rosenberg, then Chairman of the Department of Human Genetics, Yale University Medical School testified:

> When does this potential for human life become actual? As a scientist, I must answer I do not know. Moreover, I have not

been able to find a single piece of scientific evidence which helps me with that question.

Not surprisingly, a great deal has been spoken and written on the subject. Some people argue, as you have heard, that life begins at conception . . . .

I have no quarrel with anyone's ideas on this matter so long as it is clearly understood that they are personal beliefs based on personal judgments and not scientific truths.

Id. at 50.

5. Dr. Rosenberg then explained the reason science alone cannot answer the question -- the inability to test the hypothesis by the scientific method:

The scientific method depends on two essential things -- a thesis or idea and a means of testing that idea. Scientists have been able to determine, for instance, that the Earth is round or that genes are composed of DNA because, and only because, experiments could be performed to test these ideas. Without experiments there is no science, no way to prove or disprove any idea. I maintain that concepts such as humanness are beyond the purview of science because no idea about them can be tested experimentally.

Id.

6. The National Academy of Sciences was equally emphatic:

It is the view of the National Academy of Sciences that the statement in [Senate Bill S. 158] cannot stand up to the scrutiny of science. This section reads: "The Congress finds that present day scientific evidence indicates a significant likelihood that actual human life exists from conception." This statement purports to derive its conclusions from science, but it deals with a question to which science can provide no answer. The proposal in ??? that the term "person" shall

> include "all human life" has no basis within our scientific understanding. Defining the time at whcih the developing embryo becomes a person must remain a matter of moral or religious value.

Id. at 74. See also id. at 1036-36 (statement of Joseph Boyle, M.D., chairman of the board of trustsees of the American Medical Association) (there is no scientific consensus that a human life begins at conception; that question goes "far beyond the realm of medical science and into social, religious, philosophical, ethical, andmoral concerns").

7. Science can indeed provide valuable information and can answer concrete questions regarding prenatal development by identifying, for examplke, the stages of fetal brain development. But the question of when a human life truly begins calls for a conclusion as to which characteristics define the essence of human life.

8. Many other physicians and scientists made these observations at the 1981 hearings. See, e.g., id. at 68 (statement of Robert H. Ebert, M.D., President of Milbank Memorial Fund, Caroline Shields Walker, Professor of Medicine Emeritus, Harvard University) (whether a human life begins at conception is not a medical or scientific question, but a philosophical and religious

question that "can be debated endlessly and has to do with how one defines a person and 'self'"); id. at 69-70 (statement of Sherman M. Mellinkoff, M.D., Dean of the UCLA School of Medicine) (same) id. at 71 (statement or Arne G. Motulsky, M.D., Professor of Medicine and Genetics, University of Wahsington) (same); id. at 113-14 (statement of Dr. Jessica G. Davis, Director, Child Development Center, Chief, Division of Genetics, North Shore University Hosptial) (same). The subcommittee also received hundreds of letters from scientists and physicians across the country echoing Dr. Rosenberg's views. See e.g. Hearings app. at 414, 669, 716, 718.[1]

9. Science cannot define the essential attributes of human life any more than science can define such concepts as love, faith

[1] The fact that the subcommittee itself could not reach agreement on the question further highlights the inability to find the answer in scientific truth. The Human Life Bill -- S.158: Report by the Subcommittee on Separation of Powers, Senate Committee on the Judiciary, 97th Cong., 1st Sess. 39, 41 (1981) (miniority view of Senator Baucus) ("If the hearings on S. 158 held by the Sepration of Powers Subcommittee were conclusive on any point it is that in 1981 there remains no concensus among scientists, philosophers and theologians on the question of when life begins."). Indeed, the current Commissioner of the Food and Drug Administration, Frank E. Young, M.D., stated in 1981 that "science and medicine cannot unequivocally establish the time in the continum of development where human life begins") the decision is "in part moral, ethical, philosophical and religious." Hearings app. at 791.

or trust. Hearings at 50. This United States Supreme Court was indisputably correct when it observed in Roe v. Wade, 410 U.S. 113, 159 (1973), that the question of when a human life begins cannot simply be referred to an expert discipline for resolution.

10. While science cannot tell us which biological attributes establish the existence of a human being, science can tell us when certain biological attributes can be detected. For example, it is not until sometime after twenty-eight weeks of gestation that the fetal brain has the capacity to carry on the same range of neurological activity as the brain in a full-term newborn. Fetal brain development is obviously a ong and incremental process. Brain cells in the neocortex, the portion of the brain in which the processes we call thought, emotion and consciousness occur, must be sufficiently developed to permit this kind of neurological activity to take place.

11. At about twenty-eight weeks of gestation, brain development is marked by the sudden emergence of dendritic spines in the neocortex. Dendritic spines are essential components

in the brain's cellular circuitry.[2] One study has indicated that neocortical cells possess no dendritic spines as late as 24 to 27 weeks of gestation.[3] It is also at that time that large-scale neocortical synaptogenesis (the development of neural connections between brain cells in the neocortex) begins,[4] although limited sunaptogensis may begin as early as 19 to 22 weeks of gestation.[5] Some primitive motor activities such as swallowing and sponteneous movement of limbs, begin between eight and thirteen weeks of gestation.[6] However, the thalamocortical connections which are prerequisites for neocortical reception of

[2] M. Flower, Neuromaturation and the Moral Status of Human Fetal Life in Abortion Rights and Fetal Personhood 71, 77 (Doerr & Prescott ed. 1989) (emphasis in original) (forthcoming).

[3] D.P. Purpura, Morphogenesis of Visual Cortex in the Preterm Infant in Growth and Development of the Brain, 33, 46 (M.A.B. Brasier ed. 1975) (examining the visual cortex).

[4] Id. 45-46.

[5] Molliver, Kostovic & Van Der Loos, The Development of Synapses in Cerebral Cortex of the Human Fetus, 50 Brain Research 403-07 (1973).

[6] Flower, supra n.1 at 75.

bodily sensation do not begin to develop until approximately 22 or 23 weeks.[7]

12. In addition, regular patterned electroencephalograms (EEGs) with characteristics of an adult EEG appear at approximately 30 weeks.[8] Of course, the fact that the fetus develops the bare biological capacity for crucial neurological processes does not necessarily mean that these neurological processes actually begin to occur in this period. Indeed, the cerebral cortex is relatively nonfunctional even in normal newborns.[9]

13. The neurobiological data indicate that the fetus lacks the physical capacity for the neurological activities we associate with human thought until sometime after 28 weeks gestation. In other words, the capacity for the human thought process as we know

[7] Kostovic & Goldman-Rakic, Transient Cholonastatuse Staining in the Mediorsal Mugleus of the Thalamus and its Connections in the Developing Human and Money Brain, 219 Journal of comparative Neurology 431-37 (1983); and Human Fetal Cerebrum Revealed by Transient choliestarasa Staining, 4 Journal of Neuroscience 25-42 (1984).

[8] Flower, supra n. 1 at 79.

[9] Shewman, Capron, Warwick & Schulman, The Use of Anancephalic Infants as Organ Donors: A Critique, 261 Jouranl of American Medical Association 1773-81 (1989).

it cannot exist before tha time. Thus, although people may have differentn views as to whether the capacity for human thought is relevant to status as a human beings, the argument that a fetus should have the status of a born person because science shows that a fetus is able to think is false.

14. The Act's finding that human life begins at the moment of conception cannot draw support form science or scientific evidence. The Act's legislative findings represents the philosophical or religious judgment that human life begins at conception, and cannot be justified as legislation that merely restates a scientific fact.

WHEREFORE, I respectfully request that the Court grant plaintiff's Motion for Summary Judgment and Permanent Injunction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 15, 1990 /s/ Michael V.L. Bennett
MICHAEL V.L. BENNETT

CASSIDY, FOSS & SAN FILIPPO
225 Broad Street, Box 896
Red Bank, NJ 07701-0896
(908) 741-2525
By: Harold J. Cassidy
Attorneys for the Plaintiff

Patrick J. Mullaney, Esq.
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Morristown, NJ 07960
(201) 984-8777
Co-Counsel for the Plaintiff

J.M., a fictitious name of a real person, individually; and as guardian of his unborn child	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MONMOUTH COUNTY DOCKET NO. MON-C-66-92
Plaintiff-Appellant vs. V.C.; a fictitious name of a real individual; W.M.C., a fictitious name of a real corporation; JOSEPH BLOW AND RICHARD ROE, et al. Defendant-Respondents	CIVIL ACTION ORDER DENYING MOTION FOR RECONSIDERATION FILED ON BEHALF OF J.M., INDIVIDUALLY

THIS MATTER having been presented to the Court on behalf of J.M. in his individual capacity, seeking an Order to reconsider that portion of the court's Order of March 19, 1992, which

dismissed the Complaint brought by J.M. individually and ruling that he had no standing to raise any rights of the unborn child of V.G. and that the court having heard the matter on Tuesday, May 12, 1992, Harold J. Cassidy, Esq., appearing on behalf of the plaintiff, and Frances Farber-Walter, Esq., appearing on behalf of the defendant, and good cause having been shown;

IT IS on this 12th day of May , 1992;

ORDERED that the motion filed by J.M. in his individual capacity seeking reconsideration of the Chancery Division Order of March 19, 1992 which dismissed his Complaint in his individual capacity be and is hereby denied; and

IT IS FURTHER ORDERED that a true copy of this within Order has been served upon all parties within 7 days of the date hereof.

Signed: 5/21/92

/S/Patrick J. McGann
PATRICK J. MCGANN, J.S.C.

NOTICE OF APPEAL
SUPREME COURT OF NEW JERSEY

CASSIDY, FOSS & SAN FILIPPO
225 Broad Street, P.O. Box 696
Red Bank, New Jersey 07701-0696
(908) 741-2525
By: Harold J. Cassidy
Attorneys for the Plaintiff

J.M., individually,	:
	: DOCKET NO.
Plaintiff	:
	: ON APPEAL FROM:
vs.	: SUPERIOR COURT OF NEW JERSEY
	: APPELLATE DIVISION
V.C.;W.M.C.; JOSEPH BLOW; and RICHARD ROE, fictitious names of real individuals,	: MONMOUTH COUNTY
	: DOCKET NO. A-4772-91T5
	:
	: SAT BELOW:
Defendant	: HON. ANTELL
	: HON. DREIER
	: HON. VILLANUEVA, t/a
	:
	: TRIAL COURT:
	: Chancery Division
	: Monmouth County
	: Sat Below
	: Hon. Patrick J. McGann, JSC

TO:Clerk, Supreme Court of New Jersey
Hughes Justice Complex
CN 970
Trenton, New Jersey 08625

Clerk, Appellate Division of
the Superior Court of New Jersey
Hughes Justice Complex
CN 006
Trenton, New Jersey 08625

Frances Farber-Walter, Esq.
Stryker, Tams & Dill
Two Penn Plaza East
Newark, New Jersey 07105
Attorney for V.C.

Robert J. Del Tufo, Attorney General
Office of the Attorney General
CN 080
Trenton, New Jersey 08625

NOTICE IS HEREBY GIVEN THAT J.M. in his individual capacity only, **APPEALS TO THE SUPREME COURT OF NEW JERSEY, FROM THE WHOLE OF THE FINAL ORDER OF THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY** entered in this action on September 21, 1992. There is no preference under Rule 1:2-5.

THE PLAINTIFF-APPELLANT HEREBY CERTIFIES THAT THIS NOTICE OF APPEAL HAS BEEN SERVED ON:

NAME	DATE OF SERVICE	TYPE OF SERVICE
COURT APPEALED FROM:		
Clerk Appellate Division	11/4/92	Regular Mail
TRIAL COURT JUDGE:		
Patrick J. McGann, JSC	11/4/92	Regular Mail

TRIAL COURT CLERK:

	Clerk Superior Court	11/4/92	Regular Mail

ATTORNEY GENERAL OR GOVERNMENTAL OFFICE UNDER R. 2:5-1(h):

	Robert J. Del Tufo, Attorney General	11/4/92	Regular Mail

OTHER PARTIES:
NAME & DESIGNATION:

	ATTORNEY NAME, ADDRESS AND PHONE	DATE OF SERVICE	TYPE OF SERVICE
V.C.	Frances Farber-Walter, Esq. Stryker, Tams & Dill Two Penn Plaza East Newark, New Jersey 07105 (201) 624-9300	11/4/92	Regular Mail

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS NOTICE OF APPEAL ON EACH OF THE PERSONS REQUIRED AS INDICATED ABOVE.

NOVEMBER 4, 1992 By: Harold J. Cassidy
HAROLD J. CASSIDY, ESQ.

I HEREBY CERTIFY THAT THE TRANSCRIPT OF PROCEEDING IS IN THE POSSESSION OF PLAINTIFF'S COUNSEL OF RECORD, CASSIDY, FOSS & SAN FILIPPO.

NOVEMBER 4, 1992 By: Harold J. Cassidy
HAROLD J. CASSIDY, ESQ.

I FURTHER CERTIFY THAT THE APPELLANT HAS COMPLIED WITH RULE 2:5-1(f)(2) (CASE INFORMATION STATEMENT) AND THE C.I.S. FILED IN THE APPELLATE DIVISION IS ATTACHED HERETO TOGETHER WITH AN UPDATED STATEMENT PERTAINING TO THIS APPEAL.

NOVEMBER 4, 1992 By: Harold J. Cassidy
HAROLD J. CASSIDY, ESQ.

SUPREME COURT OF NEW JERSEY
CIVIL CASE INFORMATION STATEMENT

TITLE IN FULL:

J.M., individually
NO.
Plaintiff-Appellant

vs.

V.C., W.M.C., Joseph Blow and Richard Roe, fictitious names of real individuals

FOR OFFICIAL USE ONLY

SUPREME COURT DOCKET

NOTICE OF APPEAL
FILED: November 4, 1992

DATE SENT: November 4, 1992

APPELLANT'S ATTORNEY(S): XX Plaintiff Defendant Other (specify)

NAME	ADDRESS	TELEPHONE	CLIENT
Cassidy, Foss individually & San Filippo	225 Broad Street Red Bank, New Jersey 07701	(908) 741-2525	J.M.,

RESPONDENT'S ATTORNEY(S)*:

NAME	ADDRESS	TELEPHONE	CLIENT
Frances Farber-Walter	Two Penn Plaza East Newark, New Jersey 07105	(201) 624-9300	V.C.

[*Indicate which parties, if any, did not participate below or who were no longer party to the action at the time of entry of the Order/Judgment being appealed.]

GIVE DATE AND SUMMARY OF TERMS OF JUDGMENT ENTERED BELOW:

Does this determination dispose of all issues

as to all parties? Yes X No __

If not, has it been certified as final pursuant to R. 4:42-2? Yes __ No __ N/A

If not, leave to appeal must be sought. R.2:2-4, 2:5-6.)

Is the validity of a statute, executive Order, franchise or constitutional provision of this State questioned? (R. 2:5-1(h)). Yes X No __

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

See attached.

TO THE EXTEND POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL, AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). Appellant or cross appellant only.

See attached.

All civil appeals will be screened under the civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of issues, abbreviation of transcript and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question.

State whether you think this case may benefit from a conference. Yes __ No X

Explain your answer.

The subject of the dispute requires a decision of the Supreme Court of New Jersey.

A negative response will not necessarily rule out the scheduling of a pre-argument conference.

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

   (A) Arises from substantially the same case or controversy as this appeal? Yes __ No X

   (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes X No __

2. WAS THERE ANY PRIOR APPEAL INVOLVING THE CASE OR CONTROVERSY?

   Yes __ No X

IF YES, STATE:

As to (1) above: State of N.J. v. Alexander Loce, App. Div. Docket No. A-934-91.

As to (2) above: This party has had no prior appeal. His child's case was the subject of Order of the Court dated March 24, 1992; M-969; M-970; and M-971.

The time for filing your brief and appendix is governed by Rule 2:6-11 unless modified by court order. If any circumstances exist which might justify a shorter or longer period of time, give a detailed explanation. Your answer does not alter the time limits set forth in the Rules of Court.

Appellant files within the requirement of 2:6-11.

In the event there is any change with respect to any entry on the Case Information Statement, appellant shall have a continuing obligation to file an amended Case Information Statement on the prescribed form.

J.M., Individually — Harold J. Cassidy, Esq.

Name of Appellant or Respondent — Name of Counsel of Record

_____ — /s/ Harold J. Cassidy, Esq.

A BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY

This is an action brought by J.M. in his own individual capacity asserting his own claim including his right to act as guardian ad litem of his unborn child, brought against V.C., the mother of J.M.'s child, seeking to adjudicate the relative rights of J.M., V.C. and the unborn child, and further seeking an injunction of an abortion.

J.M., who is 38 years of age, was dating V.C. when she became pregnant with J.M.'s child out of wedlock. J.M. had offered to marry V.C. but she had determined that she was not prepared at that time for marriage. The two discussed the future of their child and when V.C. announced to J.M. that she intended to terminate the child's life, despite J.M.'s pleas to the contrary, J.M. instituted this suit to enjoin the abortion, asserting, among other rights, his right to act as the guardian ad litem of the child.

The trial court had ruled that J.M. did not have standing to raise the rights of the unborn child, that he had no right to act as guardian ad litem, and dismissed his individual complaint. The action was instituted on March 9, 1992 and on that date the trial court entered an injunction against V.C. On March 19, 1992 V.C. moved to dismiss the complaint of J.M. individually. The trial judge dismissed the Complaint of J.M. individually but denied the application as it pertained to the action maintained by the unborn child. V.C. moved before the Appellate Division for leave to appeal the denial of the dismissal of the unborn child's action and plaintiff J.M. individually moved for leave to appeal the dismissal of his individual claim. The Appellate Division denied both motions, except it granted leave as it related to the entry of the injunction and entered an Order dissolving the injunction. The Appellate Division declined to disturb the Complaint on behalf of the unborn child and refused to entertain the portion of the Order of March 19 dismissing J.M.'s individual Complaint.

A motion for leave to Appeal to the New Jersey Supreme Court filed by V.C. was granted and the Supreme Court summarily reversed the Chancery Division dismissing the unborn child's complaint. The motion for leave to appeal filed in the New Jersey Supreme Court by J.M. in his individual capacity was denied. J.M.

filed a motion for reconsideration in the Chancery Division in a timely manner. After the Chancery Court denied J.M.'s individual motion for reconsideration, J.M. filed a timely Notice of Appeal in the Appellate Division. The Appellate Division entered an Order affirming the Chancery Division on September 21. 1992.

ISSUES TO BE RAISED

This Appeal, filed by J.M., individually, presents the following issues to be raised on appeal without prejudice:

1. The unborn child of J.M. and V.C. is as a matter of fact and law an individual member of the human race to whom constitutional rights under State and Federal law are extended. The unborn child is an individual member of the human race from the moment of conception.

2. J.M. individually has a right under both the State and Federal Constitutions to defend life which includes the life of his unborn child (N.J. Const. Article I, Section I).

3. J.M. individually has the standing to litigate the unborn child's substantive rights, and has a right to act as Guardian Ad Litem of his child prior to birth.

4. Included in the rights of the unborn child is the child's right to have one or both of his parents to assert his or her rights.

5. J.M. individually possesses a right to raise the legal rights of his children, including a child who is unborn.

6. The unborn child enjoys constitutional protection under the due process clause of the Fourteenth Amendment of the United States Constitution and under Article I, Section I of the Constitution of the State of New Jersey.

7. If the state has a compelling interest in protecting the life of an unborn child, then the child's father has an interest and corresponding right to protect that same life.

8. Extending the right of abortion to V.C. over the objections of the father (in both or one capacity) is violative of public policy of the State of New Jersey that the unborn child is an individual to whom others owe a duty; the policy of the State of New Jersey arises out of the government's populous. It is against the public policy of the State of New Jersey which bases decisions concerning children upon what is in the best interest of the children; it is contrary to public policy that the State does not terminate parental rights unless there is a showing of abandonment or neglect; it is against the public policy of the State of New Jersey which extends the rights to parents to protect the life of their children.

9. Balancing the rights of J.M. as guardian against the right of V.C. require a denial of an abortion to V.C.

10. The privacy rights of V.C. do not include decisions about abortion where the mother's life is not threatened and the pregnancy is not the result of rape or its equivalent.

11. The nature of the mother's rights concerning termination is not "fundamental" where the mother's life is not threatened and the pregnancy is not the result of rape or its equivalent.

12. J.M. has his own individual and constitutional rights which include a fundamental right under State and Federal law of companionship or association with his child and that right exists prior to the child's birth.

13. J.M. individually, possesses, under State and Federal Law, a fundamental constitution right to procreate which would be denied him in the state that extended the right of abortion to V.C.

14. J.M. individually, possesses under both State and Federal Law the constitutional right to discharge his duty to his children, including his duties to the child prior to actual birth.

15. J.M. individually is entitled to equal protection of the laws, under both State and Federal Law, which would be denied him if the State extended, a right of abortion to V.C.

16. The balancing of the rights of J.M. against those of V.C., if any, requires a denial of an abortion to V.C.

17. The specific authorization by the State of New Jersey for the taking of the life of children any time prior to birth is in violation of both the State and Federal Constitution.

A. There Is No Final Judgment Regarding Petitioner's Claims As An Individual.

Petitioner initiated this case in the State trial court with a complaint seeking an injunction prohibiting respondent from obtaining an abortion. petitioner brought the complaint on behalf of himself and as guardian *ad litem* for the fetus. The trial court dismissed the complaint insofar as it was brought on behalf of petitioner individually, but declined to dismiss the complaint brought on behalf of the fetus, and on that basis temporarily enjoined respondent from having an abortion. Both parties sought emergent leave to appeal from the State appellate courts. The New Jersey Supreme Court ultimately granted respondent leave to appeal, summarily reversed and vacated the temporary restraints and summarily dismissed the complaint brought on behalf of fetus. The appellate courts, however, denied petitioner leave to appeal the dismissal of the complaint brought on behalf of himself individually, so that portion of the trial court's decision was never heard by the appellate courts.

Following the New Jersey Supreme Court's order denying him leave to appeal, petitioner returned to the trial court and moved for reconsideration of the order dismissing the complaint brought on

behalf of petitioner individually. When the motion for reconsideration was denied, petitioner filed a notice of appeal of the trial court's dismissal of his individual claim. This appeal was as of right and timely filed, and it is still pending in the Appellate Division of the New Jersey Superior Court.[2]

Under 28 U.S.C. §1257, Supreme Court review of State Court decisions is available only with respect to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." This "final judgment rule" is the first requirement for jurisdiction under Section 1257. Generally, to be reviewable the State court judgment "must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market Street R. Co. v. Railroad Comm'n*, 324 U.S. 548, 551 (1945).

[2] Petitioner's appeal to the Appellate Division is as of right pursuant to N.J. Ct. R.2:2-3(a)(1). Although the notice of appeal was filed more than 45 days after the order dismissing the complaint brought by petitioner individually, see N.J. Ct. R.2:4-1(a), the time for filing was properly tolled by petitioner's motion for reconsideration. See N.J. Ct. 4.2:4-3(e); N.J. Ct.R. 4:49-2.

The finality rule "serves several ends: (1) it avoids piecemeal review of federal courts of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs." *North Dakota Pharmacy Board v. Snyder's Stores*, 414 U.S. 156, 159 (1973).

Although a State trial court order may qualify for review under Section 1257, this is true only if the order cannot be reviewed by *any* State appellate court. *See Grovey v. Townsend*, 295 U.S. 45, 47 (1935). But where there is an appeal as of right in a higher court, or even if discretionary review is available, such review must be sought. *See Benton v. Maryland*, 395 U.S. 784, 786 (1969); *Tumey v. Ohio*, 273 U.S. 510, 515 (1927).

In this case, petitioner has properly taken an appeal as of right from the trial court's decision to dismiss his individual complaint, and that appeal is still pending in the New Jersey Superior Court, Appellate Division. The appeal raises all the same federal constitutional issues petitioner seeks to raise before this Court.

This pending appeal in the New Jersey State court system bars review of petitioner's claim in this Court.

Citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), however, petitioner argues that the pending State court appeal does not preclude jurisdiction under Section 1257. See Cert. Pet. 3.[3] *Cox* represents a line of cases where this Court has found finality under Section 1257, despite the pendency of State court proceedings, in limited circumstances where the federal issues have been finally decided by the State's highest court, the remaining State court proceedings involve only collateral, non-federal issues, and important policy considerations favor immediate review of the federal issues in this Court. *See, e.g., North Dakota Pharmacy Board v. Snyder's Stores*, 414 U.S. at 159-64.[4]

[3] Because the petitions at issue are virtually identical, reference throughout is made to the petition in No. 91-2034 as "Cert. Pet. ___," and the appendix thereto as "Apx. Vo. __, at __." The appendix to this brief in opposition is cited as "App. __a."

[4] *Cox*, 420 U.S. at 479-85, identified four circumstances where finality can exist despite pending proceedings in the State courts: (1) where for all practical purposes the federal issue is conclusively determined, so that, for example, only ministerial acts remain; (2) where the federal issue is finally decided by the State's highest court, and will survive and require review regardless of the outcome of further State court proceedings; (3) where the federal issue is finally decided, but with further proceedings in the State

But although *Cox* represents the "practical rather than a technical construction" this Court has applied to the finality requirement, *see Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 546 (1949), this approach is not meant to "swallow the rule" of finality embodied in Section 1257, *Flynt v. Ohio*, 451 U.S. 619, 622 (1981), and in situations falling outside the categories mentioned in *Cox*, it still remains true that the existence of pending State court proceedings will preclude review in this Court. In *Flynt*, for example, this Court concluded that it lacked jurisdiction under Section 1257 to review a State supreme court decision rejecting a cliam of discriminatory prosecution asserted by the publisher of an allegedly obscene magazine. Although the publisher claimed that the prosecution violated his federal rights, and that a favorable ruling on constitutional grounds would terminate the litigation, this Court found that the State court judgment was not "a final judgment within any of the four exceptions identified in *Cox*," and that Supreme Court review court

courts, regardless of their outcome, later review of the federal issue cannot be had; and (4) where the federal issue has been finally decided, reversal on the federal issue could be dispositive and refusal immediately to review the State court decision could seriously erode federal policy.

"await final judgment without any adverse effect upon important federal interests." *Id.* at 621, 622.

None of the *Cox* exceptions to the finality rule apply in this case simply because the New Jersey Supreme Court's decision never reviewed the trial court's dismissal of petitioner's complaint brought on behalf of himself at all, but instead merely denied leave to appeal. The issues raised in petitioner's pending appeal in the New Jersey Appellate Division are not collateral state-law issues, but are the very same federal issues petitioner seeks to bring before this Court. Consequently, petitioner's federla issues have not yet been conclusively adjudicated in the State courts, and there is no final judgment on his federal claims brought as an individual. Therefore, this Court lacks jurisdiction under Section 1257.

SUPREME COURT OF NEW JERSEY
M-527 September Term 1992
35,952

J.M., etc.,

Plaintiff,

v.

V.C., et al.,

Defendants.

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to file an overlength brief is granted.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 8th day of December, 1992.

/s/ Stephen Townsend

Clerk of the Supreme Court

SUPREME COURT OF NEW JERSEY
M-890 September Term 1992
35,952

J.M., Individually,

Plaintiff-Movant,

v.

V.C.,

Defendant-Respondent,

and

W.M.C., JOSEPH BLOW
and RICHARD ROE, fictitious
names of real individuals,

Defendants.

This matter having been duly presented to the Court;

It is ORDERED that the motion for leave to file an overlength brief is granted.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of March, 1993.

/s/ Stephen Townsend

Clerk of the Supreme Court

SUPREME COURT OF NEW JERSEY
M-891 September Term 1992
35,952

J.M., Individually,

Plaintiff-Movant,

v.

V.C.,

Defendant-Respondent,

and

W.M.C., JOSEPH BLOW
and RICHARD ROE, fictitious
names of real individuals,

Defendants.

This matter having been duly presented to the Court;

It is ORDERED that the motion for leave to file a supplemental brief is granted.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of March, 1993.

/s/ Stephen Townsend

Clerk of the Supreme Court

SUPREME COURT OF NEW JERSEY
M-889 September Term 1992
35,952

J.M., Individually,

Plaintiff-Movant,

v.

V.C.,

Defendant-Respondent,

and

W.M.C., JOSEPH BLOW
and RICHARD ROE, fictitious
names of real individuals,

Defendants.

This matter having come before the Court on an appeal as of right pursuant to Rule 2:2-1(a)(1), based on plaintiff's assertion that the matter presents a substantial constitutional question concerning whether a developing human embryo should be regarded as a person from the moment of conception for purposes of constitutional protection under the Fourteenth Amendment;

And the Court having determined that the question posed by plaintiff is governed by current law, Planned Parenthood v. Casey, 505 U.S. __, 112 S.Ct. 2791, 120 L.Ed. 2d 674 (1992;

And good cause appearing;

It is ORDERED that the motion to dismiss the appeal is granted.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of March, 1993.

/s/ Stephen Townsend

Clerk of the Supreme Court

Chief Justice Wilentz and Justices Clifford, Handler, Pollock, O'Hern, Garibaldi, and Stein join in this Order.

A-223

SUPREME COURT OF NEW JERSEY
M-888 September Term 1992
35,952

J.M., Individually,

Plaintiff-Movant,

v.

V.C.,

Defendant-Respondent,

and

W.M.C., JOSEPH BLOW
and RICHARD ROE, fictitious
names of real individuals,

Defendants.

This matter having been duly presented to the Court;

It is ORDERED that the motion of International Right To Life Federation, Inc., et al., for leave to appear as amici curiae is dismissed as moot.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of March, 1993.

/s/ Stephen Townsend

Clerk of the Supreme Court

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Attorneys for

J.M., individually,	SUPREME COURT OF NEW JERSEY
Plaintiff-Appellant,	DOCKET NO. 35,952
vs.	Civil Action
V.C., et al.	CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF J.M. SETTING FORTH THE FACTS HERETO UNDISCLOSED TO THE COURT
Defendant-Respondent	

J.M., being of full age, deposes and says:

1. I am J.M. the plaintiff in this case. I submit this certification under seal and I request that the Court, for the reasons expressed below, maintain this Certification under seal until March 15, 1993. I sign a second Affidavit, made out in my full name, bearing my full signature, certifying that I am indeed the person who swore out this Certification which is signed with my initials only.

2. When this lawsuit was commenced in March of 1992, it quite naturally placed a strain on the relationship that I had with V.C. That relationship was permanently altered. After the Supreme Court vacated the injunction in this case, however, V.C. and I began seeing each other again and we were able to do so despite the feelings that we had concerning the lawsuit. I must tell the Court, however, that our relationship was in fact changed and the ongoing lawsuit represented a deep difference in our beliefs concerning abortion. V.C. told me that her lawyers had asked her to receive some kind of acknowledgement or award because of her stand on abortion. She told me that she declined and would not attend a dinner they wanted her to attend. Nonetheless, she has steadfastly maintained that her legal position was, and still is, correct.

3. Thereafter, V.C. became pregnant for the second time with my child in June of 1992. When she told me that she was pregnant with my child, it was an extremely difficult situation for both of us. At a point when the new child was approximately ten weeks old, V.C. advised me that she was planning to have another abortion and she actually scheduled the procedure. I felt extraordinarily helpless. I felt it was unnatural to be in a position

where I had no way of protecting the child and was unable to seek protection through the Courts or any other means. V.C., after a number of days told me she changed her mind and she decided not to have an abortion. When she told me this, she told me that it was because she was convinced that the child would experience pain and she was unable to subject her new baby to that experience and she would be unable to live with it. At the very same time, she cautioned me never to tell anyone that she was "pro-life" because she believes it is a mother's right to have an abortion. She repeatedly stated that her position in this lawsuit is legally correct.

4. Shortly after V.C. advised me that she would not terminate the life of the child, she told me that she did not want me to communicate with her any longer. As a result of this demand, I was not able to speak to her, see her or effectively communicate with her at all. I was not really sure if she was carrying the child and I lived daily with the concern of not knowing what was happening with the child. In addition, I was concerned about V.C. because I had seen how heavily the decision about abortion wand about carrying the child weighed upon her. She literally was living with a day to day judgment about whether

another human being would live or die. She told me that she was not in communication with her lawyers concerning this. She has told me that as of this date, she still is afraid to tell her lawyers.

5. For my part, I had to honor her request and could never advise her one way or another. For the sake of the child's life, I felt I could do or say nothing that would be interpreted as "pressure." The decision not to terminate the child's life, as positive as it was and as happy as it made both of us, was tempered by the fact that the continuing "right" to terminate the child became a barrier between V.C. and myself and weighed upon V.C. Yet, it was the two of us who were anticipating the coming of the child. At the time when the child was approximately 20 weeks old, V.C. communicated with me because she was having some difficulties. I saw her and spoke to her a few times and the baby was healthy. Thereafter, we spoke on occasion, but I always knew that if V.C. decided to terminate her pregnancy, she would never tell me in advance. V.C. told me that she did not want to tell too many people so she would not be subjected to the pressure others might bring upon her to terminate the child. She did refuse to communicate with me at times and I had no way of knowing if she was going to terminate the child's life. Because there is no

legal obligation for her to advise me of her intentions, and because, as I understand through my lawyers, New Jersey authorizes abortion at any time, even after the child is 20 weeks old, I was not in a position to protect the chid even after "viability" because I would never know the intentions of V.C. in advance. I have deliberately avoided discussing this problem or brings this to the Court's attention because I did not wish to bring any pressure to bear upon V.C. or to embarrass her at a time when stress could cause her problems with the pregnancy. At the present time, the baby is approximately 32 weeks old and is due to be born the first week of March, 1993.

6. I do not want any pressure or embarrassment for V.C. I feel obligated to disclose this information to the Court and I believe it is likely that the information will be made public at some point during this case. I personally preferred to disclose this information to the Court before they made a decision on the motion filed by v.C. Although I do not know whether the Court could consider it significant or not. At this stage both V.C. and the baby should be out of danger. Yet, I am concerned that if this Certification is made part of the public record, that it might someday appear in a newspaper. I do not want any stress for V.C. while she is carrying

the child and I ask that the Court keep this certification under seal until mid-March after the child is born. Thereafter, I believe it is as important as ever that the identities of the parties not be revealed. For one thing, the new baby should be protected from the information of the history of the first pregnancy as well as the disclosures that I make in this certification.

7. The experience that we have had during this second pregnancy, because of the ongoing abortion decision, has pulled us apart instead of bringing us together as parents. It clearly placed extra pressure on V.C. to make a constant, continuing and daily decision about whether her child would live or die. It placed me in a position of total helplessness. I believe some of her expressions to me show a regret that she had the first abortion. Maybe worse of all was listening to V.C.'s expressions and how I saw the awful way she felt at the thought that she might subject a child to a painful, brutal death.

8. I hereby certify that the foregoing statements made by me are true. I understand that if any of the statements made by me are willfully false, I am subject to punishment.

/s/ J.M.
J.M., Plaintiff-Appellant

Dated: January 22, 1993

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J.M., individually,	SUPREME COURT OF NEW JERSEY
Plaintiff-Appellant,	DOCKET NO. 35,952
vs.	Civil Action
V.C., et al.	CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT OF MOTHER TERESA OF CALCUTTA SUBMITTED ONBEHALF
Defendant-Respondent	OF PLAINTIFF-APPELLANT J.M., INDIVIDUALLY, IN OPPOSITION TO DEFENDANT V.C.'S MOTION FOR SUMMARY DISPOSITION (OR DISMISSAL)

MOTHER TERESA, being of full age, deposes and says:

1. I am Mother Teresa of Calcutta, India and I reside at 54/A ACH.JAGDISH, Ch. BOSE RD., Calcutta, India 700 016. I am the founder and Mother Superior of the Missionaries of Charity founded in 1950 which maintains its headquarters here in Calcutta.

2. I submit this Certification to the New Jersey Supreme Court in the case of J.M. v. V.C. I understand that this

Certification is used to oppose a motion that has been filed with the Court by the defendant, V.C., which requests that the Court dispose of this very important case in a summary fashion or to rule that the case should be dismissed because it does not present substantial constitutional issues.

3. I submit this Certification primarily because this case is clearly one of such public importance for people everywhere in the world that it should be treated in a complete fashion, and should be given full attention by the Court. I urge that the Court write a complete opinion after full argument and only after people of good will and conscience have been given the opportunity to address the Court on the important questions the case presents, in the capacity of "Friends of the Court."

4. Our Missionaries of Charity have provided services for the poor in many parts of the world. In the United States our main office is at 335 East 145th Street, Bronx, New York 10451. As part of our work we provide services to children and to poor families. I have traveled to different parts of the world and I believe that I speak for many, many millions of people when I tell the New Jersey Supreme Court that there are many who know and appreciate the sanctity of human life and the special uniqueness of

each one of us. There may be no other issue of greater importance to contemporary mankind than the question of whether each one of us has the right to live, even before birth.

5. I am not educated in the laws of the United States. However, if it is true, as I understand, that the American Courts have never directly answered the question of when the life of each of us begins and whether a child is a member of the human race prior to birth; or whether the child has rights (in the context of abortion) then I indeed speak for many millions in saying that we cannot continue along the course that we have taken without first answering these centrai questions and the question of whether any person or any government has the right to terminate the life of another ^ innocent human being. ~~solely based upon questions of convenience.~~

6. I urge this most noble Court to decline the invitation of the defendant, V.C., to treat this important case in a summary manner. I urge that this Court have a full argument and write a full opinion on these most important questions, and ultimately rule that no government can ^ violate ~~withhold~~ the right to live from any ^ innocent human being. The future of the human race and the dignity of human life

depends upon the resolution of ~~the~~ such as those questions ^ that are before this Court in this case. It would be a grave injustice to all mankind if the Court were to sanction the argument of the defendant on her motion to dismiss this appeal: that these issues are not worthy of review or are too unimportant to address. Organizations which have expertise to offer to the Court should be given an opportunity to file with the Court before the Court reaches any decision in this case. I am very grateful to the New Jersey Supreme Court for this opportunity to be heard on this motion. If the Motion for Summary Disposition is denied and the case goes forward in a full way, I shall review whether I myself or any organization with which I am associated would file a Friend of the Court Brief in this case. Thank you for reading this Certification and God Bless the important work of this Court.

7. I hereby certify that the foregoing statements made by me are true. I understand that if any of the statements made by me are willfully false, I am subject to punishment.

/s/ Mother Teresa mc
Mother Teresa
Missionaries of Charity

Dated: 26 February , 1993

REGULATION OF THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEW JERSEY 13:35-4.2 (TERMINATION OF PREGNANCIES)

13:35-4.2 Termination of Pregnancy

(a) This rule is intended to regulate the quality of medical care offered by licensed physicians for the protection of the public, and is not intended to affect rules of the Department of Health establishing institutional requirements. To the extent that rules of the two agencies may overlap, the Medical Board recognizes and relies upon the regulatory procedures of the Department of Health in establishing minimum acceptable standards for non-physician personnel, equipment and resources, the adequacy of the physical plant of the facility in which surgical procedures shall be performed, and the facility's interrelationship with an adequate network of health care-related resources such as ambulance service, etc.

(b) The termination of a pregnancy at any stage of gestation is a procedure which may be performed only by a physician licensed to practice medicine and surgery in the State of New Jersey.

(c) Provisions of this rule referring to stage of pregnancy shall be in terms of weeks from start of last menstrual period or "weeks LMP." For example, the stage of pregnancy at 12 weeks gestational size, as determined by a physician, is the equivalent of 14 weeks from the first day of the last menstrual period (LMP).

(d) After 14 weeks LMP, any termination procedure other than dilation and evacuation (D & E) shall be performed only in a licensed hospital.

(e) Fifteen weeks through 18 weeks LMP: After 14 weeks LMP and through 18 weeks LMP, a D & E procedure may be performed either in a licensed hospital or in a licensed ambulatory care facility (referred to herein as LACF) authorized to perform surgical procedures by the Department of Health. The physician may perform the procedure in an LACF which shall have a Medical Director who shall chair a Credentials Committee. The Committee

shall grant to operating physicians practice privileges relating to the complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician for the health, safety and welfare of the public. A list of the privileges of each physician shall contain the effective date of each privilege conferred, shall be reviewed at least biennially, and shall be preserved in the files of the LACF.

(f) Nineteen weeks through 20 weeks LMP: A physician planning to perform a D & E procedure after 18 weeks LMP and through 20 weeks LMP in an LACF shall first file with the Board a certification signed by the Medical Director that the physician meets the eligibility standards set forth in (f)1 through 7 below and shall comply with its requirements.

1. The physician is certified or eligible for certification by the American Board of Obstetrics-Gynecology or the American Osteopathic Board of Obstetrics-Gynecology, and the physician satisfactorily completes at least 15 hours of Continuing Medical Education each year in obstetrics-gynecology.

2. The physician has admitting and surgical privileges at a nearby licensed hospital which has an operating room, blood bank, and an intensive care unit. The hospital shall be accessible within 20 minutes driving time during the usual hours of operation of the clinic.

3. The procedure shall be done in a location which is designated by the Department of Health as a licensed ambulatory care facility (LACF) authorized to perform surgical procedures as in subsection (e) above. The LACF shall be licensed by the Department of Health as an ambulatory care facility authorized to perform surgical procedures. The facility shall be in current and good standing at all times when surgical procedures are performed there. The LACF shall have a written agreement with an ambulance service assuring immediate transportation of a patient at all times when a patient has been admitted for surgery and until the patient has been discharged from the recovery room.

4. The procedure shall be done in an LACF which shall have a Medical Director and a Credentials Committee which have duly

evaluated the training, experience and skill of the physician at continuous and successive levels of complexity of the D & E procedure in pregnancies advancing in stages from 18 weeks LMP through 19 weeks LMP through 20 weeks LMP, and the physician has been granted successive practice privileges consistent with management of the increased risk to the health and safety of the patient at that stage documented in the personnel file maintained for that physician. (Where the applicant physician is also the Medical Director, the physician shall submit a certificate from the Administrator or Chief of Department of a hospital or the Medical Director of an LACF where the applicant has been evaluated and credentialed in a comparable manner.) The physician new to the LACF shall have his or her operating technique evaluated initially and at least yearly by the Medical Director or his or her designee who shall possess appropriate experience with D & E procedures at least as advanced as those for which the applicant physician seeks approval. The applicant shall be evaluated during that number of procedures which shall be adequate to achieve a sufficient professional skill, and the evaluation procedure shall be documented in the personnel file maintained for that physician. The Medical Director shall agree to review the charts of all patients who suffer complications and in addition shall review charts at random, and shall calculate the complication rate of each physician.

5. The physician shall perform the procedure only on a patient who has been examined and found to be within the eligibility criteria established for advanced D & E procedures in the LACF setting.

6. The procedure shall be performed in an LACF providing adequate staff support and resources for the operative procedure as well as interim follow-up and post-operative care, and where a physician is available and readily accessible 24 hours/day to respond to any postoperative problem.

7. The physician shall cooperate with the Medical Director to maintain contemporaneous and cumulative statistical records demonstrating the utilization and safety record of each stage procedure and of each surgeon. Said records shall be available for inspection by the Board and copies shall be submitted to the Board

semi-annually. These records shall include the following information and data shall be maintained in records compiled monthly, but individual patients comprising the lists shall be identified only by date and by initials and/or case number:

i. Number of patients who received termination procedures;

ii. Number of patients who received laminaria or osmotic cervical dilators who failed to return for completion of the procedure;

iii. Number of patients who reported for postoperative visits;

iv. Number of patients who needed repeat procedures;

v. Number of patients who received transfusions;

vi. Number of patients suspected of perforation;

vii. Number of patients who developed pelvic inflammatory disease within two weeks;

viii. Number of patients who were admitted to a hospital within two weeks of the procedure.

ix. Number of patients who died within 30 days.

Subparagraphs ii. through ix. above shall be summarized by number and percentage of monthly total for post-18 week procedures. The Board shall inspect such reports monthly for the first five months and at such further monthly intervals as it deems necessary.

(g) After 20 weeks: A physician may request from the Board permission to perform D & E procedures in an LACF after 20 weeks LMP. Such request shall be accompanied by proof, to the satisfaction of the Board, of superior training and experience as well as proof of support staff and facilities adequate to accommodate the increased risk to the patient of such procedure.

(h) The physician shall make suitable arrangements to insure that all tissues removed shall be properly disposed of by submission to a qualified physician for pathologic analysis or by incineration or by delivery to a person/entity licensed to make biologic and/or tissue disposals in accordance with law including rules of the Department of Health applicable to an LACF.